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MINISTRY OF AGRICULTURE, GOVERNMENT OF INDIA

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PREFACE

An attempt is made in this brochure to bring together all the existing legislation on the control of moneylending in different States as on the 26th January, 1950. It is hoped that a comparative study of the extent and nature of regulation in different areas will suggest lines on which further reform needs to be undertaken.

The detailed work involved in the preparation of this Brochure has been done by the Land Economics Branch of the Directorate under the supervision of Shri M. S. Menon.

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*Previously the following acts were in force :—

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'The Indore Moneylenders Act, 1938.

The Moneylenders Act (Gwalior State 2003 Svt.

Dawson (Junior) Moneylenders Act, 1943.

INTRODUCTION

The Need for Legislation.—In spite of the expansion of organised banking in the country, and the increasingly important role played by the Co-operatives and the State in financing agriculture, the bulk of rural finance is still provided by the money-lender. He plies his trade in rural areas under different roles, sometimes as merchant or commission agent, sometimes as the substantial landlord in the locality. The agriculturist everywhere has to borrow; but in a country of undersized and fragmented farms, held by a dense population bereft of other sources of livelihood, borrowing becomes a chronic feature. The reports of the Provincial Banking Enquiry Committees (1930) show that a very major portion of the debt incurred by agriculturists is towards the repayment of older debts. A large fraction of this might be attributed to the high rates of interest charged by the money-lender. According to the Provincial Banking Enquiry Committee Reports, the rates charged by the village sowcar in the different parts of Bombay varied from 9 to 36 per cent; in the Central Provinces and Berar 25 per cent was the usual rate in the case of tenants with no transferable rights, and in the U.P., from 6 to 18½ per cent on mortgage loans. These charges are unduly high and this has been one of the important causes for the progressive impoverishment of the land and its transfer from agriculturists to non-agriculturists. If the money-lender is also a merchant or commission agent, he covets the produce; if he is a landlord, he covets the land. He has no fixed principles of accounting, save those which he chooses to follow; he does not give regular receipts for moneys received and oftentimes takes bonds for higher amounts than the sums lent. In as much as part of the high interest he charges is intended to cover the risk of loss from the unpunctual and the improvident, the honest are made to pay for the slackness of the defaulter.

So long however as agriculture is pursued, in the manner in which it is now done and organised banking makes little advance in the countryside, the money-lender would remain an indispensable element of rural credit. His methods of business are prompt and elastic, and he gives spot finance. He may be an unsafe source to borrow from, but he satisfies in an eminent degree two important conditions of credit, viz., proximity and facility. His total elimination from the rural economy, therefore, is neither possible nor desirable. If his methods of business could be regularised, interest charges limited, accounts subjected to systematic scrutiny, and malpractices checked both by penal provisions as well as by reducing the scope for their operations, he could be made to play a very useful role in the credit mechanism of the country. This has been the main objective of the legislation on money-lending.

History of Legislation.—The first attempt at some regulation was made after the Deccan riots, when the Deccan Agriculturists' Relief Act, 1879, was passed. This Act laid down that in suits by or against agriculturists it is open to the court to examine the motive of the debt and to make out an account of the money actually due. The court, in taking an account of the transactions, can reduce the rates of interest if it considered it unreasonable. The Act also prohibited the arrest of the borrower and the sale of his land, unless it was specifically pledged. The Royal Commission on Agriculture, 1928, however, found that the provisions of the Act were frequently evaded.

Another legislation bearing on the subject was an amendment to the Contract Act in 1899 which provided for relief to debtors in cases of unconscionable bargains, on proof of undue influence or where the bargain contained any stipulation by way of penalty. In the prevailing state of ignorance and illiteracy of the borrowing class and their pressing need for money, it was not easy to prove 'undue influence' behind a debt agreement or that the transaction was an "unconscionable" bargain. The Act, therefore, proved ineffective.

The same principles were embodied in the Usurious Loans Act, 1918. It authorised the courts, when it found that the interest was "excessive" and the transaction between the parties "substantially unfair", to reopen the transaction and to relieve the debtor of all liability in respect of any excessive interest. The Act was also extended by an amendment in 1926 to any of the parties, who sought relief from mortgages. What constituted an "excessive" rate of interest or an "unfair" transaction was not defined, but was left to the courts to decide in the light of the circumstances of the transactions concerned. The Act, however, remained a dead letter practically in every province, mainly due to uncertainty of some of the provisions relating to excessiveness of rate of interest and the "unfairness of the transaction" and want of sufficient evidence to prove either.

The Usurious Loans Act was amended by Bengal in 1933 ; Assam, C. P. (Madhya Pradesh), the Punjab, and U. P. in 1934 ; Madras in 1937 ; Bombay and Bihar in 1938. This was done mainly to make the provisions more effective and less capable of evasion. The rates fixed under these amending acts were thus the maximum rates that the money-lenders could charge without being accused of usury.

The question of controlling the business of money-lenders was discussed by the Royal Commission on Agriculture and the various Provincial Banking Enquiry Committees. The former recommended the adoption of the principle underlying the Punjab Regulation of Accounts Act and the British Money-lenders' Act 1927. The views of the Banking Enquiry Committees were, however, more varied. Licensing of money-lenders was favoured by the Bengal and C.P. Committees. The Madras and Bihar and Orissa Committees wanted it to be optional, not believing general registration to be feasible. The Bihar and Orissa Committees, however, wanted to encourage the better type of money-lender by attaching certain privileges to registration. The Punjab and Bombay Committees were definitely against registration. The Bombay Committee recommended a bill on the lines of the Punjab Regulation of Accounts Act. The Bengal Committee advocated abolition of the compound interest and the revival of *damdapat* (the rule by which payment by way of interest should not exceed the principle amount). Incidentally, none of the Committees recommended the fixation of maximum rates of interest.

The depression of the thirties increased the distress of the agriculturist borrower to an acute degree. The prices of agricultural produce fell more steeply than the prices of other industrial goods, and the balance of economy, never much in favour of agriculturists, was tilted heavily against them. Debts mounted up to an alarming scale ; mortgages were foreclosed ; and lands began to pass rapidly from the hands of the agriculturists to the non-agriculturists. A series of legislative measures were, therefore, introduced to arrest the process, fix the conditions of credit on a more reasonable basis, scale down existing debts and afford relief to the large class of borrowers. Part of the measures were designed to meet the immediate situation arising out of the sudden fall in prices and the increased burden of indebtedness, and part to make the credit machinery work more smoothly in the future. The several money-lenders' acts passed by the provinces during this period belong to the latter class of legislation. The legislation on debt relief and debt-conciliation passed during the same period was mainly designed to meet the special difficulties arising out of the depression and to scale down the debts to within reasonable limits. This latter will, however, form the subject matter of a separate study.

Among the provinces, Punjab was the first to undertake legislation in the sphere, with the Regulation of Accounts Act, 1930. Bengal followed in 1933 and Madhya Pradesh (C. P. and Berar) and Assam in 1934 by passing Moneylenders' Acts. Punjab passed two more acts, Debtor's Protection Act in 1936 and the Registration of Money-lender's Act in 1938. Money-lenders' Acts were passed also

y Bihar in 1938, Orissa and Coorg in 1939, and Bombay in 1946. Some of the States like Mysore and Hyderabad also passed similar Acts during this period. Madras and the U. P. have not passed any Money-lenders' Acts as such, but Madras has a Debtors' Protection Act passed in 1934, which provides for the compulsory maintenance of accounts and grant of receipts for payments by the money-lenders and the pawn-brokers. Madras has passed also a Pawn-broker's Act in 1943 fixing the interest charges allowed to pawn-brokers and requiring them to take out license; keep prescribed books and give receipts for moneys received. In U. P., the transactions of money-lenders are controlled by the Agriculturists Relief Act, 1934, and the sale, transfer, borrowing capacity and rate of interest by the Regulation of Sales Act, 1934, Agriculturists' Debt Redemption Act, 1940 and the Regulation of Agricultural Credit Act, 1940.

The scope of Legislation.—The main provisions of some of the important Acts comprise (i) the licensing and registration of money-lenders, (ii) maintenance of accounts in prescribed forms, (iii) furnishing of receipts and periodical statement of accounts to debtors, (iv) fixing of maximum rates of interests, (v) protection of debtors from molestation and intimidation, and (vi) penalties for infringement of the provisions.

All the Acts are, however, not equally comprehensive. The Madras Debtors' Protection Act, 1934, does not provide for licensing or registration of creditors, but only requires that they should maintain accounts and give receipts for every payment received, and provides as penalty for infringement, the disallowance of costs in a suit brought forward by a creditor, and the loss of interest for the period of default in case he fails to give a receipt. Assam and Coorg Money-lenders' Acts do not also provide for either registration or licensing.

The scope of the Acts is not uniform. The Punjab Debtors Protection Act and the Punjab Regulation of Accounts Act exclude from their purview, transactions which are "in substance mortgage or sale of immovable property". The Coorg Act also makes a similar exclusion. The Bengal Act excludes all commercial loans. The Madras Debtors' Protection Act excludes from the definition of a loan an advance made by a landlord to his tenants, by a lessor to his lessee, or by one partner in cultivation or co-sharer to another. The Orissa Act does not exclude from its application the loans advanced by scheduled or commercial banks. The Bihar Act does not exclude the loans advanced by either Co-operative Societies or Commercial Banks. In Orissa, a money-lender whose regular business does not exceed a capital of Rs. 1,000, is not regarded as money-lender for most purposes.

The Rates of Interest.—The rates of interest permitted under the different Acts also vary greatly as shown under :

Maximum Rates of Interest allowed

State		Secured		Unsecured	
		Simple	Compound	Simple	Compound
Assam	The Assam Money-lenders Amendment Act, 1943 (Sec. 4).	9 3/8	Prohibited	12½	Prohibited
Bihar*	The Bihar Money-lenders Act (Sec. 9 and 10).	9	Prohibited	12	Prohibited
Bombay	The Bombay Money-lenders Act (Sec. 25).	6		9	
Madhya Pradesh	Usurious Loans Act, 1918	12½	10 per cent.	18	10 per cent.

* It is sought to be reduced to 6 and 9 per cent. by a recent amendment before the assembly.

State	Secured		Unsecured	
	Simple	Compound	Simple	Compound
Madras . . . The Madras Agriculturists Act, 1938 (Sec. 9).	6½		6½	
Orissa . . . The Orissa Money-lenders Act (Sec. 9).			12	
Punjab . . . The Punjab Relief of Indebtedness (Amendment) Act, 1940.	7½ or 2 per cent. above the bank rate whichever is higher.		12	
Uttar Pradesh* . . The United Provinces Debt Redemption Act 1940 [Sec. 9 (2).]	4½		6	
West Bengal . . . The Bengal Money-lenders Act, 1939 (Sec. 30).	8		10	
Pepsu . . . The Patiala Relief of Indebtedness Act, 1999 Svt. Sec. 5 (2) (e).	7½ or 2 per cent above the bank rate whichever is higher.		12½	
Rajasthan . . . No Legislation . . .	..		..
Saurashtra . . . No Legislation . . .	..		..
Hyderabad . . . The Hyderabad Money-lenders Act 1349F. (Sec. 10).	6	Prohibited	9	Prohibited
Jammu and Kashmir. . . The Jammu and Kashmir Regulation of Accounts Act 2000 Svt.	..		..
Mysore . . . The Mysore Money-lenders Act, 1939 (Sec. 14).	9	6 per cent. with	12 yearly rest.	
Travancore-Cochin . . Travancore Civil Procedure Code Regulation 1100.	12		..	
. . . Cochin Usurious Loans Act 1111 Sec. 3 (2) (e).	12		..	
Ajmer Merwara . . . The Bombay Money-lenders Act, 1946 (Sec. 25).	6		9	
Coorg . . . The Coorg Money-lenders Act, 1937 (Sec. 8).	7½	Prohibited	12	Prohibited
Vindhya Pradesh . . . No Act . . .	..		..
Himachal Pradesh . . Rates have been fixed in some of the former states only.	..		..

* In case of agriculturists and workmen only.

Exemption from attachment, etc.—The Bihar and Orissa Acts empower the court to estimate the value of the judgment-debtors' property and of that portion of such property, the proceeds of the sale of which it considers will be sufficient to satisfy the decree. The Bihar Act exempts from attachment or sale in execution of decree one-third of the total area of the holding of the judgment-debtor. The arrest and detention in prison of the judgment-debtor in execution of a decree is prohibited under the Bengal Act, 1940 and the Bombay Act of 1946.*

The Punjab Debtor's Protection Act empowers the collector to exempt such portion of the judgment-debtors' land from temporary alienation as is necessary for the maintenance of the judgment-debtor and the members of his family. Nor is ancestral property liable to attachment in the execution of a decree. The Act also exempts standing crops, other than cotton or sugarcane, from attachment or sale in the execution of a decree.

Regulation of Mortgages.—The Punjab Act also limits the period of alienation in the execution of a decree to twenty years in the case of land owned by a member of a statutory agricultural tribe. The Orissa Act has an important provision which makes usufructuary mortgages automatically redeemable at the expiration of fifteen years from the date of mortgage. The Assam Act also contains similar provisions in respect of small loans, not exceeding five hundred rupees. The period is limited to twelve years in respect of mortgages executed before the commencement of the Assam Money-lenders' (Amendment) Act, 1943 and to nine years in respect of mortgages executed after the commencement of the Act. Other States, e.g., the Punjab and U. P., have also incorporated this principle in their debt legislations.

Protection from intimidation and molestation.—Intimidation and molestation of a debtor by the creditor is punishable with imprisonment under the Bombay and Bengal Money-lenders' Acts. The C. P. and Berar Protection of Debtors' Act of 1937 also contains similar provisions.

Penalties.—The usual penalty for contravention of the provisions of the Acts is the denial to the creditor of the legal machinery to sue the debtor. The court is debarred from entertaining suits by such money-lenders. Under the Orissa Act contravention of the provision relating to the maintenance of accounts is an offence punishable with fine; in Bihar, it is punishable with fine or imprisonment or both. The taking of a promissory note, acknowledgement of bond for sums other than the sums actually lent, or which leaves blanks to be filled after execution, is punishable with fine or imprisonment under the Bombay Act. The Bombay Act has also laid down that the violation of any of the provisions, except those to which specific penalties are attached, would entail fine for the first and second offences and rigorous imprisonment for subsequent offences.

Recommendations of the Agricultural Finance Sub-Committee.—The Agricultural Finance Sub-Committee of the Policy Committee on Agriculture, Forestry and Fisheries (1944-45) which was presided upon by Prof. D. R. Gadgil, reviewed the several acts on money-lending and made the following recommendations :—

- (i) The Acts should be comprehensive and should *inter alia* include provisions relating to licensing and registration of money-lenders, maintenance of accounts in prescribed form, furnishing of statement of accounts periodically to the debtors, issue of receipts, limitation of the rates of interest, enforcement of the rate of Damdupat, protection of debtors from molestation, etc.

* In some of the States, the rules framed under the Acts make provisions for some of these exemptions.

- (ii) No uniform rate of interest should be stipulated, but only a schedule of rates in consonance with variations in local conditions.
- (iii) A state inspecting and supervising agency should be set up in each province to conduct surprise checks of Money-lenders' accounts, and publish periodical reviews.
- (iv) Regulation of mortgages is also necessary to build up a sound system of rural credit.

The recommendations of the Committee have not, however, been fully implemented so far by any of the State Governments. Only the Bombay Government passed an act in 1946 (amended in 1948) which incorporated many of the provisions suggested by the Committee. In some of the States, although the Money-lenders' Act may not by itself be comprehensive, many of the provisions recommended by the Committee are found scattered in a number of enactments bearing on debt relief. For instance, the application of the rule of *Damdapat*, is not found in the Bombay Money-lenders Act, 1947, but is included in the Bombay Agricultural Debtors Relief Act, 1947, under Section 22. Maximum rates of interest chargeable on loans are fixed in Madras, Uttar Pradesh and the Punjab under the Debt Relief Acts of the respective States. The Punjab Registration of Money-lenders' Act, 1938, deals only with the registration and licensing of money-lenders; the duty of the creditor to maintain and furnish accounts is the subject of a separate act, the Punjab Regulation of Accounts Act, 1930, while the protection given to the debtor against attachment of property in execution of decree is contained in another act, the Punjab Debtor's Protection Act, 1936. In Uttar Pradesh, the application of *Damdapat* and the permissible maximum rates of interest are laid down under the Debt Redemption Act, 1940, while restrictions on alienations, attachment in execution of decrees, permissible forms of mortgage, etc., are dealt with under the Regulation of Agricultural Credit Act, 1940.

There is thus considerable variation in the different legislation concerning the scope of the Acts, interest rate charged, regulatory clauses, degree of protection granted to the debtors, powers of the court, and the provisions relating to enforcement and penalties for infringement. The recommendation of the Gadgil Committee, that no uniform rate of interest should be stipulated in the Act, but only a schedule of maximum rates worked out in consonance with variations in local conditions, has not been incorporated in any legislation. Neither has the recommendation regarding the establishment of a regular inspecting agency been given effect to in any State, or periodic reviews of the working of the money-lenders acts made by the Governments.

The working of the Acts.—The available information on the administration of the Money-lenders Acts in the several States and the extent to which they have succeeded in their objective is meagre. During the period of the last war, however, and especially in the initial years of boom in agricultural prices, there was a noticeable rise in rural prosperity and the need to borrow was considerably reduced. Interest burdens were lightened, old debts were redeemed and new assets in the shape of land and equipments were bought out of profit margins. The necessity for the rigorous enforcement of debt control and money-lenders acts was not, therefore, so pressing. But towards the close of the war, after about 1944, costs also began to mount up sharply and gradually overtake prices. Evidence is not wanting to show that the agriculturists' need to borrow for current consumption as well as production purposes is again on the increase. This increasing pressure for credit is to some extent reflected in the high rates of interest charged by the money-lenders, which some of the recent investigations have brought to light. The survey into agricultural indebtedness in Murbad Taluka of the Thana District in Bombay Konkan conducted by the Reserve Bank of India at the close

of 1949, for instance, has shown that the "proportion of loans subjected to high or usurious rates of interest was 58% of total loans in respect of which interest rates were prescribed in money terms"*. The survey conducted in Darrang District in Assam in 1950 has revealed that, in spite of the Money-lenders Act, the rates of interest charged by the money-lender vary from a minimum of 10 % to more than 50%, and that an analysis of loans has shown that the largest number bear from 30% to 50% rate of interest†. Similarly, in the Report on Rural Indebtedness in Bengal in 1945 made by the Indian Statistical Institute, Calcutta, the classification of debts incurred from the money-lender according to the rate of interest charged showed that the largest amount bear interest ranging from 11% to 20% and the next largest, from 31% to 37%.

An indication of the operation of the Acts can also be had from the number of licenses issued in the States, where such licensing is in force. The number of licenses issued in 1948-49 in some of the States is given below :—

State	No. of licences issued
West Bengal	1,002
Bihar	2,972
Madhya Pradesh	3,848
Punjab	268
Bombay	6,766 (till July, 1949)
Mysore	1,032

The number of money-lenders to whom licenses have been issued does not appear to be large. It is probable that not all the persons carrying on the business of money-lending may have applied for a license.

In the absence of regular reviews of the working of the Acts, no statistical data is available regarding the actual number of money-lenders or the volume and manner of business done by them. Such evidence as has been collected by the Agriculture Credit Department of the Reserve Bank of India from different sources has however tended to show that the efforts to control money-lenders have not, on the whole been much of a success. ‡ Both the Agricultural Finance Sub-Committee, as well as the Famine Inquiry Commission (1945), which elicited the views of the State Governments on the effects of the control measures on rural credit, have recorded that the reports indicate some contraction of credit as a result of these regulations. This is also the view of the Rural Banking Enquiry Committee (1950). Opinion is however, divided as to whether such contraction of credit has on the whole been beneficial to the rural community or not. Some of the States were of the opinion that the Acts would in the long run tend to discourage unproductive borrowing. In some States, serious shrinkage of credit has been reported, while some others have stated that the difficulties have been overcome by various subterfuges adopted by the money-lender, often with the collusion of the borrower, in circumventing the provisions of the Acts. In the prevailing state of credit in rural areas it might not probably be altogether advisable to put undue restrictions on money-lender's activities. On the other hand, it has also to be seen that his transactions are regulated in a manner which would combine facility in obtaining credit with safety to the borrower's position and property. Effective measures have, therefore, to be taken which, while curbing the evil propensities of the money-lender, would at the same time succeed in harnessing his experience, knowledge and resources to the organised machinery of rural credit.

* Reserve Bank Bulletin, January, 1950 :

Agricultural Indebtedness in Marbat Taluka of the Thana District in Bombay Konkan.

† A survey of Rural Economic Conditions in Darrang, 1953, by Department of Economics and Statistics, Assam, p. 28.

‡ Report of the Agricultural Finance Sub-Committee of the Policy Committee for Agriculture, Forestry and Fisheries, p. 61.

Acts on Money-lending

THE USURIOUS LOANS ACT, 1918.

(X of 1918)

(AS MODIFIED UP TO 1ST OCTOBER, 1928)

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to courts to deal in certain cases with usurious loans of money or in kind; It is hereby enacted as follows :—

**Short title
and extent.**

1. (1) This Act may be called the Usurious Loans Act, 1918.
(2) It extends to the whole of British India, including British Baluchistan.

(3) The Local Government may, by notification in the local official gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise,

(2) "Loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) "Suit to which this Act applies" means any suit—

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Act, in respect of any loan made either before or after the commencement of Act; ¹or

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act].

**Re-opening
of transac-
tions.**

3. (1) Notwithstanding anything in the Usury Laws Repeat Act, 1855, where, in any suit to which this Act applies **XXVIII of 1855.** whether heard *ex parte* or otherwise, the Court has reason to believe,—

(a) that the interest is excessive; and

For Statement of Objects and Reasons see Gazette of India, 1917, Pt. V, p. 86 for Report of Select Committee see *ibid*, 1918, Pt. V, p. 47 and for proceedings in Council see *ibid*, 1917, Pt. VI, p. 715, and *ibid*, 1918, Pt. VI, pp. 94 and 707.

¹ This word and clause (c) were added by s. 2 of the usurious Loans (Amendment) Act, 1926 (28 of 1926).

USURIOUS LOANS ACT

(b) that the transaction was, as between the parties thereto substantially unfair,
the Court may exercise all or any of the following powers, namely, may,—

- (i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;
- (ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;
- (ii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that, in the exercise of these powers, the court shall not—

- (i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than/
¹ [twelve] years from the date of the transaction;
- (ii) do anything which affects any decree of a Court.

Explanation.—In the case of a suit brought on a series of transactions the expression ‘the transaction’ means, for the purposes of proviso (i), the first of such transactions.

- (2) (a) In this section “excessive” means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.
- (b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.
- (c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transaction

¹ This word was substituted for the word “six” by s. 3 of the Usurious Loans (Amendment) Act, 1926 (23 of 1926).

USURIOUS LOANS ACT

of the debtor, by way of loan, so far as the same were known or must be taken to have been known, to the creditor.

- (d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.—Interests may of itself be sufficient evidence that a transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan ¹[or for the redemption of any such security].

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide*, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, the word 'notice' shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882.

IV of 1882.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

Insolvency proceedings. 4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit which this Act applies.

¹These words were added by s. 3 of the Usurious Loans (Amendment) Act, 1926 (23 of 1926).

THE ASSAM MONEY-LENDERS' ACT, 1934.

Assam Act IV of 1934.*

(AS AMENDED BY THE ASSAM ACTS VI OF 1943. XVIII OF 1948.

An Act to provide for more effectual control of money-lending in Assam.

Preamble. WHEREAS it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money-lenders in Assam ;

and whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act.

It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Assam Money-Lenders' Act, 1934.

(2) It extends to the whole of Assam including the territories mentioned in section 14 of the Assam General Clauses Act, 1915.

Assam Act I
of 1915.

(3) It shall come into force on such date as the Local Government may by notification direct.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

“(1) “ ‘Money-lender’ means a person including any Company or Association or body of individuals, whether incorporated or not, who grants a loan;” and]

(2) “ ‘Interest’ means rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise;

*Came into force on 1-4-35, *vide* notification No. 5748 G.T. dated 20-12-34 published at P.1575 of the Assam Gazette dt. 26-12-34 Part II. The Act ceases to be in force in Hill districts and Fr. tracts—*vide* notification No. 2316 A.P. dt. 3-4-35 at P.547 of Assam Gazette dt. 10-4-35.

1. “Declared by notification No. 2316-A.P., dated 3rd April, 1935 that the Act shall cease to be in force from 3rd April 1935 in :—

1. Garo Hills District.
2. British portions of Khasi and Jaintia Hills district other than Shillong municipality and cantonment.
3. Mikir Hills (in Nowgong and Sibsagar districts).
4. North Cachar (in Cachar district).
5. Naga Hills district.
6. Lushai Hills district.
7. Sadiya Frontier Tract.
8. Balipar Frontier Tract.
9. Lakhimpura Frontier Tract”.
2. Substituted by Sec. 2 of Assam Act 18 of 1948.

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[¹“(3) ‘Loan’ means an advance, whether of money or in kind, made on condition of repayment with interest and includes any bond bearing interest executed in respect of past liabilities and any transaction which is in substance a loan, but does not include—

(a) a loan to, or by, or a deposit with, any Society or Association registered under the Societies Registration Act, ^{Act XXI of 1860.} 1860 or under any other law relating to public, religious or charitable objects,

(b) a loan advanced before or after the commencement of this Act—

(i) by a Co-operative Life Insurance Society, or a Co-operative Society ; or

(ii) by a Bank which has been declared to be a notified Bank under section 2A whether or not such Bank was declared to be a notified Bank at the time the loan was advanced.]

(4) “Prescribed” means prescribed by rules made under this Act.

¹ Notified Bank (2) [“(2A. The Provincial Government may, by notification in the official Gazette, declare any Bank to be a notified Bank for the purpose of this Act.”)]

Penalty for stating larger amount in the bond than actually lent. 3. If the loan actually made be less than the sum entered in the bond or hand note, the money-lender shall be guilty of a contravention of the provisions of this Act and shall, on conviction, be punishable with fine not exceeding two hundred rupees.

Prohibition of compound interest and provisions as to defaulting. 4. Any contract made [before or] (³) after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract :

(1) [* * *]

Simple interest in case of default. Prohibition of charge for expenses on loans by money-lenders. 5. Any agreement between a money-lender and a borrower or intending borrower for the payment by the borrower or intending borrower to the money-lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal, and if any sum is paid to a money-lender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent that amount shall be deemed to be reduced accordingly.

Exception.—This will not debar money-lenders from recovering reasonable costs of inspection of Revenue or Regis-

1. Substituted by Sec. 2 of Assam Act 18 of 1943.

2. Ins. by Sec. 3 of Assam Act 18 of 1943.

3. Ins. by Sec. 3 of Assam Act 6 of 1943.

4. Omitted by Sec. 3 of Assam Act 6 of 1943.

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tration records including examination of titles and also costs of inspection of property, in cases where the contract includes a stipulation that property is given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof.

Keeping of accounts. 6. Every money-lender shall keep accounts in the form prescribed.

Obligation of money-lender to supply information as to state of loan and time of executing the contract or at any time during the continuance of the contract, supply to the borrower. or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the money-lender or his agent showing—

- (a) the date on which the loan was made, the amount of the principal of the loan, and the rate per cent. per annum of interest charged; and
- (b) the amount of any payment already received by the money-lender in respect of the loan and the date on which it was made; and
- (c) the amount of every sum due to the money-lender, but unpaid, and the date upon which it became due and the amount of interest accrued due and unpaid in respect of every such sum; and
- (d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due:

Provided that when a demand under this sub-section has once been complied with, a second demand may not be made in respect of the same loan within six months.

Copy of document for borrower. (2) A money-lender shall on demand in writing by the borrower, and on tender of the prescribed sum for expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

Civil effects of non-compliance. (3) If a money-lender to whom a demand has been made under this section fail without reasonable excuse to comply therewith within one month after the demand has been made, he shall not so long as the default continues be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default.

4[8. "Where in any suit in respect of any money lent or any security taken for money lent by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of $9\frac{3}{8}$ per cent. per annum in the case of a secured loan or $12\frac{1}{2}$ per cent. per annum in the case of an unsecured loan, the Court shall

¹. Subs. by Sec. 4 of Assam Act 6 of 1943.

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not decree as interest any sum in excess of 9½ per cent. per annum and 12½ per cent. per annum respectively.

Explanation.—"Secured Loans" means mortgage debts as well as bonds, for the satisfaction of the interest whereof land has been delivered by debtors, in conformity with local custom, into the possession of creditors to be enjoyed in lieu of interest by the latter."]

¹["9. (1) No money-lender shall, in respect of any loan made before or after the commencement of this Act, recover, on account of interest and principal, whether through Court or otherwise or by way of usufruct of lands in usufructuary mortgages, a sum greater in aggregate than double the principal of the loan :

Provided that nothing in this sub-section shall affect:—

(i) A Bank advancing money at interest not exceeding 6 per cent. per annum

or

(ii) Subscribers to a loan made to or debentures or other securities of any description issued by Government, a public body, a Bank, or a Company.

Explanation.—The term 'aggregate' means and includes the amount already paid amicably or otherwise.

(2) Notwithstanding anything contained in sub-section (1), a usufructuary mortgage, in cases where the loan did not exceed five hundred rupees in principal, shall, unless discharged previously, be deemed to stand discharged:—

(i) if the mortgage was executed before the commencement of the Assam Money Lenders' (Amendment) Act, 1943, after the expiration of twelve years from the date of such execution, or

(ii) if the mortgage was executed after the commencement of that Act, after the expiration of nine years from the date of such execution.

(3) In the case of a bond or any other instrument executed for past liabilities the original sum actually advanced shall be considered as the principal of the loan for the purpose of sub-section (1).

(4) The heirs, successors or assigns of a mortgagor shall have the same rights under the Section as the original mortgagor would have had, and if by any instrument executed, subsequently to the original instrument any property has been substituted for the property mortgaged by the original instrument, the provisions of this section shall apply to the property so substituted as if it were the property mortgaged by the original instrument.

Deposit in Court of 10. (1) Where a borrower has sent to a money-lender by postal money-order or by registered post with acknowledged-

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Money due to money-lender. Money due any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same, the borrower may apply in the prescribed manner to the lowest Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender, and the Court shall thereupon keep the sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

(2) If the money-lender accepts money sent in the manner specified in sub-section (1) by a borrower or withdraws money deposited under the said sub-section, he shall not be bound by any statement made by the borrower in remitting or depositing the money.

Restrictions on money lending advertisements. 11. (1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name or address of a money-lender, or containing an invitation—

- (a) to borrow money from a money-lender ; or
- (b) to enter into any transaction involving the borrowing of money from a money-lender ; or
- (c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a money-lender.

Agents and canvassers inviting borrowers must not be employed by money-lenders. ((2) No money-lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender, and no person shall act as such agent or canvasser or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or under taking to introduce to a money-lender any person desiring to borrow money.

Penalty. (3) Any person acting in contravention of any of the provisions of this section shall in respect of each offence be liable, on conviction to imprisonment for a term not exceeding three months or a fine not exceeding three hundred rupees or both.

Civil effects of contravention. (4) Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall be illegal, unless the money-lender proves that the contravention occurred without his consent or connivance.

Penalty in case of fraud. 12. (1) Where in any suit in respect of any money lent or in respect of any security taken for money lent by a money-lender, the trying Court is of opinion that the money-lender has been guilty of fraud, or of any contravention of the provisions of this Act, or is otherwise unfit to carry on the business of money-lending, the Court may make an order debarring him from carrying on such business for such time as may be specified in the order and an appeal shall lie from such an order to the court to which an appeal ordinarily

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lies under the provisions of the Code of Civil Procedure, 1908, **Act V of 1908.** irrespective of the money value of the suit.

Penalty.

(2) Any money-lender carrying on the business of money-lending in contravention of any order made under sub-section (1) shall, on conviction, be liable to a fine which may extend to five hundred rupees.

Appeal.

13. Any order of conviction passed under this Act shall be appealable to the Court to which appeal ordinarily lies under the Code of Criminal Procedure, 1898, irrespective of the amount of fine to which an accused may be sentenced. **Act V of 1898.**

Power of Local Government to make rules.

14. (1) The Local Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (i) the form in which money-lenders shall keep accounts;
- (ii) the intervals at which borrowers may demand statements of accounts under sub-section (1) of section 7 and the fees to be paid for copies of documents supplied under sub-section (2) of the same section ;
- (iii) the manner in which an application for a deposit is to be made under sub-section (1) of section 10, and a notice of the deposit is to be sent to the money-lender under the said sub-section; and
- (iv) the enforcement of orders made under sub-section (1) of section 12.

(3) The power to make rules under this Act shall be subject to the condition of previous publication.

THE BIHAR MONEY-LENDERS ACT, 1938.

[Bihar Act III of 1938.]

(AS REPEALED IN PART BY BIHAR ACT VII OF 1939.)

An Act to regulate Money-lending transactions and to grant relief to debtors in the Province of Bihar.

WHEREAS it is expedient to regulate money-lending transactions and to grant relief to debtors in the Province of Bihar ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Bihar Money-Lenders Act, 1938.

(2) It extends to the whole of the Province of Bihar.

(3) It shall come into force on such date as the Governor may, by notification, appoint, and different dates may be so appointed for different provisions.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “Court” includes the Registrar, any person exercising the powers of the Registrar or deciding a dispute, a liquidator and an arbitrator under the Bihar and Orissa Co-operative Societies Act, 1935, and also includes a Certificate-officer under the Bihar and Orissa Public Demands Recovery Act, 1914 ;

¹[(b) * * * * *

¹[(c) * * * * *

(d) “ interest ” means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise;

¹[(e) * * * * *

(f) “ loan ” means an advance whether of money or in kind on interest made by a money-lender, and shall include a transaction on a bond bearing interest executed in respect of past liability and any transaction which, in substance, is a loan, but shall not include—

) a loan advanced by the Provincial Government or by any local body authorised by the Provincial Government ;

¹. Clauses (b), (c), (e) repealed by Bihar Act VII of 1939, sec. 5-18 and Schedule.

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- (ii) a deposit of money in a Post Office Savings Bank or a deposit of money or other property in any other Bank or in a company or with a Co-operative Society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935; B. & O. Act VI of 1935.

Explanation.—(1) A bond bearing interest executed in respect of goods taken on credit constitutes a loan.

(2) A supply of goods on credit is not a loan.

(g) "money-lender" means a person who advances a loan and shall include a Hindu undivided family and the legal representatives and successors-in-interest, whether by inheritance, assignment or other wise, of a person who advances a loan;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "principal" means in relation to a loan the amount actually lent to the debtor;

(j) "registered money-lender" means a person to whom a registration certificate has been granted under section 5, and shall include a Hindu undivided family and the legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise, of a registered money-lender;

¹[(k) * * * * *]

(l) "Sub-Registrar" means a Sub-Registrar appointed XVI of 190 under the Indian Registration Act, 1908;

(m) "suit" includes any proceeding taken for the recovery of a loan before the Registrar, or any person exercising the powers of the Registrar or deciding a dispute, or a liquidator or an arbitrator under the Bihar and Orissa Co-operative Societies Act, 1935, B. & O. Act VI of 1935 and also includes an appeal, and

¹[(n) * * * * *].

Power of provincial Government to exempt any money-lender or class of money-lenders from the operation of all or any of the provisions of this Act.

3. The Provincial Government may, by notification, for any special reason or reasons to be stated in such notification, to exempt any money-lender or class of money-lenders or any class of loans in the whole or any part of the Province of Bihar from the operation of all or any of the provisions of this Act.

CHAPTER II.

REGISTRATION OF MONEY-LENDERS AND ACCOUNTS TO BE KEPT BY MONEY-LENDERS.

Register of money lenders.

4. (1) Every Sub-Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872.

1 of 1872

¹. Clause (k), (n) repealed by Bihar Act VII of 1939, Sec.18 and Schedule.

Registration
of money-
lenders and
registration
fee.

5. (1) Any person may make an application to be registered as a money-lender.

Every such application shall be in writing and shall state—

- (a) the name and address of the applicant ;
- (b) the name and style under which he carries on or desires to carry on business as a money-lender ;
- (c) the principal place of his business and the branches thereof, if any ;
- (d) whether any certificate of registration previously granted to him under this Act has been cancelled ; and
- (e) such other particulars as may be prescribed.

(2) (a) Every application made under sub-section (1) shall be accompanied by the prescribed registration fee and shall be presented to the Sub-Registrar within whose jurisdiction the principal place of business referred to in clause (c) of sub-section (1) is situate.

(b) Any such application, which is not accompanied by the prescribed registration fee or does not contain the particulars specified in sub-section (1), shall be summarily rejected.

(3) The Provincial Government may by rules prescribe for different classes of money lenders and for different areas a registration fee not exceeding twenty five rupees to be paid by an applicant for registration :

Provided that the Governor may, by notification, exempt any person or class of persons from the payment of the registration fee either generally or in any specified area.

(4) On receipt of an application under clause (a) of sub-section (2) the Sub-Registrar shall, except where a certificate previously granted to the applicant has been cancelled under section 19 and the order of cancellation is in force, grant a registration certificate in the prescribed form to the applicant.

Duration of
registration
certificate.

6. A registration certificate granted under section 5 shall, unless sooner cancelled under section 19, be in force for five years from the date on which it is granted.

Duty of
registered
money-lender
to maintain
accounts and
to give
receipts.

7. (1) Every registered money-lender shall, in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act,—

(a) regularly record and maintain, or cause to be recorded or maintained, an account showing for each debtor—

(i) the date of the loan, the amount of the principal of the loan and the rate per centum per annum of interest charged on the loan ;

(ii) the amount of every payment received by the money-lender in respect of the loan, and the date of such payment ; and

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- (iii) any other terms which may be agreed on between the money-lender and the debtor ;
- (b) give to the debtor, or his agent, a receipt for every sum paid by, or on behalf of, the debtor, duly signed and, if necessary, stamped at the time of such payment ;
- (c) deliver or send by registered post to the debtor, or his agent, within fifteen days of advancing the loan, a copy of the entries recorded under sub-clauses (i) and (iii) of clause (a) ;
- (d) deliver or send by registered post to the debtor, or his agent, at least once in every calendar year, a statement of account signed by himself or his agent showing the balance or amount that may be outstanding against such debtor on account of the principal and interest at the time of delivering or sending by registered post the said statement of account, and the amount of every payment received by the money-lender in respect of the loan, and the date of such payment, during the period to which the statement relates ; and
- (e) give to the debtor a signed receipt for every pawned article with its general description, immediately after it is pawned, mentioning the amount for which it is pawned.

(2) A person to whom a copy of entries in an account has been delivered or sent under clause (c) of sub-section (1) or a statement of account has been delivered or sent under clause (d) of sub-section (1), and who fails to object to the correctness of the account or the statement of account shall not, by such failure alone, be deemed to have admitted the correctness of such account or such statement of account.

CHAPTER III

¹ [Provision relating to suits in respect of loans and executions of decrees. Sec. 8-18.]

CHAPTER IV

PENALTIES AND PROCEDURE

Power of
Collector to
cancel regis-
tration certi-
ficate.

19. (1) Where in any suit brought in respect of a loan by a registered money-lender or in respect of any security for a loan by a registered money-lender, the Court is of opinion that the registered money-lender has been guilty of fraud, or of any contravention of the provisions of this Act, or is otherwise unfit to carry on the business of money-lending, the Court shall make a report to the Collector and the Collector may, on receipt of such report and after a due and proper inquiry, cancel for such period, not exceeding five years, as he thinks fit, the registration certificate granted to the money-lender.

(2) When the certificate of a registered money-lender has been cancelled under sub-section (1), such money-lender shall

¹ Repealed by the Bihar Act VII of 1939, Sec. 18 and Schedule.

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not be entitled to make any application under section 5 during the period in which such order of cancellation remains in force.

Penalty for the contravention of the provisions of section 7. **20.** (1) If any money-lender or his agent wilfully contravenes any of the provisions of clause (a) of sub-section (1) of section 7, such money-lender or agent, as the case may be, shall be punishable with imprisonment which may extend to one year or with fine not exceeding five hundred rupees, or with both.

(2) Any money-lender who contravenes any of the provisions of section 7 other than the provision of clause (a) of sub-section (1) of that section shall be punishable with fine not exceeding five hundred rupees.

Penalty for taking sala-mi, batta, gadiana, etc. **21.** If after the commencement of this Act, any money-lender or his agent takes from a debtor at the time of advancing a loan or deducts out of the principal of such loan any *salam*, *batta*, *gadiana* or other exactions of a similar nature by whatever name called or known such money-lender or his agent, as the case may be, shall be punishable with fine.

Power of Court under the Usurious Loans Act, 1918, not affected by this Act.

CHAPTER V.

MISCELLANEOUS.

[(22)]. * * * *]

Contract for payment outside the Province void. **23.** Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, any contract entered into between a money-lender and his debtor in respect of a loan advanced after the commencement of this Act providing for the payment of the amount due on such loan at any place outside the Province of Bihar shall be void.

Power to deposit money due on loan. **24.** (1) When a debtor tenders to a money-lender or his agent money on account of any interest due on a loan or on account of the principal of a loan and the money-lender or his agent refuses to receive the amount tendered or refuses to grant a receipt for the same, the debtor may deposit, in any Court in which the money-lender might have instituted a suit for the recovery of such interest or such loan, to the account of the money lender the amount tendered as aforesaid.

(2) The Court shall thereupon forthwith grant a receipt for the deposit under the seal of the Court and cause a written notice of the deposit to be served upon the money-lender.

(3) The money-lender may, at any time within three years after the date of the service upon him of the notice mentioned in sub-section (2) make an application to the Court praying for the amount deposited as aforesaid to be paid to him.

(4) If no application is made under sub-section (3) within the period mentioned in the said sub-section the amount deposited shall be disposed of in the prescribed manner.

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[BIHAR ACT III 1938]

(5) Upon receipt of an application under sub-section (3i) the Court may order such amount to be paid to the applicant upon such terms and subject to such conditions as may be specified in the order.

Court's receipt to operate as acquittance. 25. A receipt given by the Court under sub-section (2) of section 24 shall operate as an acquittance for the amount deposited as aforesaid in the same manner and the same extent as if that amount had been received by the money-lender to whose credit the deposit was made, on the date of such deposit.

Payment of loan in Cash to a debtor, etc. to be made in the presence of the sub-Registrar. 1 [(26) * * * *]

Power to make rules. 27. The Provincial Government may make rules prescribing—

- (a) the form of the register mentioned in sub-section (1) of section 4 and the particulars to be contained in such register ;
- (b) the form of the registration certificate mentioned in sub-section (4) of section 5 ;
- (c) the particulars to be contained in an application made under sub-section (1) of section 5 ;
- (d) the registration fee to be paid under section 5 ; and
- (e) the manner in which deposits made under sub-section (4) of section 24 shall be disposed of.

¹. Repealed by Bihar Act VII of 1939, Sec. 18 and Schedule.

THE BIHAR MONEY-LENDERS (REGULATION OF TRANSACTIONS) ACT, 1939.

Bihar Act VII of 1939.]

An Act to provide for the regulation of money-lending transactions in the Province of Bihar.

WHEREAS doubts have arisen regarding the validity of certain provisions of the Bihar Money-lenders Act, 1938;

AND WHEREAS for the purpose of removing such doubts it is expedient to repeal the said provisions and provide for the regulation of money-lending transactions in the Province of Bihar ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Bihar Money-lenders (Regulation of Transactions) Act, 1939.

(2) It extends to the whole of the Province of Bihar.

(3) It shall come into force on such date as the Provincial Government may, by notification, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(a) “ Court” includes the Registrar, any person exercising the powers of the Registrar, any person deciding a dispute, a liquidator and an arbitrator under the B. & O. Act Bihar and Orissa Co-operative Societies Act, 1935, and also includes a Certificate-Officer under the Bihar and Orissa Public Demands Recovery Act, 1914; ^{VI of 1935.} ^{B. & O. Act IV of 1914.}

(b) “ decree” includes an award and an order of contribution passed under the Bihar and Orissa Co-operative Societies Act, 1935 ; ^{B. & O. Act VI of 1935.}

(c) “decree-holder” includes a certificate-holder under the Bihar and Orissa Public Demands Recovery Act, 1914 ; ^{B. & O. Act IV of 1914.}

(d) “ interest” means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise ;

(e) "judgement-debtor" includes a certificate-debtor under the Bihar and Orissa Public Demands Recovery Act, 1914; B. & O. A. IV of 1914

(f) "loan" means an advance, whether of money or in kind, on interest made by a money-lender, and shall include a transaction on a bond bearing interest executed in respect of past liability and any transaction which, in substance, is a loan, but shall not include—

(i) a loan advanced by the Provincial Government or by any local body authorised by the Provincial Government ;

(ii) a deposit of money in a Post Office Savings Bank or a deposit of money or any other property in any other bank or in a company or with a Co-operative Society registered, or deemed to be registered, under the Bihar and Orissa Co-operative Societies Act, 1935 ; B. & O. A. VI of 1935

Explanation.—(1) A bond bearing interest executed in respect of goods taken on credit constitutes a loan.
(2) A supply of goods on credit is not a loan.

(g) "money-lender" means a person who advances a loan and shall include a Hindu undivided family and the legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise, of a person who advances a loan ;

(h) "principal" means in relation to a loan the amount actually lent to the debtor ;

(i) "secured loan" means a loan for which the money-lender holds a mortgage, charge or lien on the property of the debtor or any part thereof as a security for that loan ;

(j) "sub-registrar" means a sub-registrar appointed under the Indian Registration Act, 1908 ; XVI of 1908.

(k) "suit" includes any proceedings taken for the recovery of a loan before the Registrar, of the Registrar, any person deciding a dispute, a liquidator or an arbitrator under the Bihar and Orissa Co-operative Societies Act, 1935, and also includes an appeal ; and B. & O. Act VI of 1935.

(l) "unsecured loan" means any loan other than a secured loan.

Exemption
of money-
lenders from
operation of
this Act.

3. The Provincial Government may, by notification, on any special reason or reasons to be stated in such notification exempt any money-lender or class of money-lenders or any class of loans in the whole or any part of the Province of Bihar from the operation of all or any of the provisions of this Act.

CHAPTER II.

PROVISIONS RELATING TO SUITS IN RESPECT OF LOANS AND
EXECUTION OF DECREES.

Suit for re-covery of loan only maintainable by registered money-lenders. 4. No Court shall entertain a suit by a money-lender for the recovery of a loan advanced by him after the commencement of this Act unless such money-lender was registered under the Bihar Money-lenders Act, 1938, at the time when such loan was advanced : **Bihar Act III of 1938.**

Provided that such a suit shall be entertainable if the loan to which the suit relates was advanced by the money-lender at any time before the expiration of six months after the date of the commencement of this Act, and if he is granted a certificate of registration under section 5 of the Bihar Money-lenders Act, 1938, at any time before the expiration of the said six months. **Bihar Act III of 1938.**

Maximum rates. 5. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit brought by a money-lender in respect of a loan advanced after the commencement of this Act, pass a decree for interest at rates exceeding nine *per centum per annum* in the case of a secured loan and twelve *per centum per annum* in the case of an unsecured loan.

Agreements for payment of compound interest void. 6. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, an agreement entered into by a debtor for the payment of compound interest on loans advanced after the commencement of this Act shall be void.

Maximum amount of interest which may be decreed. 7. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any agreement, no Court shall, in any suit brought by a money-lender before or after the commencement of this Act in respect of a loan advanced before or after the commencement of this Act or in any appeal or proceedings in revision arising out of such suit, pass a decree for an amount of interest for the period preceding the institution of the suit, which, together with any amount already realised as interest through the Court or otherwise, is greater than the amount of loan advanced, or, if the loan is based on a document, the amount of loan mentioned in, or evidenced by such document.

Power of Court to re-open certain transaction. 8. In any suit brought by a money-lender before or after the commencement of this Act in respect of a loan advanced before the commencement of this Act or in any appeal or proceedings in revision arising out of such suit, the Court may exercise all or any of the following powers:—

(a) re-open the transaction take an account between the parties, and relieve the debtor of all liability in respect of any interest in excess of nine *per centum per annum* in the case of a secured loan and twelve *per centum simple per annum* in the case of an unsecured loan ;

(b) notwithstanding any agreement purporting to close previous dealings and to create a new obliga-

tion, re-open any account already taken between them and relieve the debtor of all liability in respect of any interest in excess of nine *per centum simple per annum* in the case of secured loan and twelve *per centum simple per annum* in the case of an unsecured loan;

- (c) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and, if the money-lender has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just.

Provided that, in the exercise of these powers, the Court shall not—

- (i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years before the institution of such suit ;
- (ii) do anything which affects any decree of a Court.

Provided further that if anything has been paid or allowed in respect of any liability for interest in excess of nine *per centum simple per annum* in the case of a secured loan and twelve *per centum simple per annum* in the case of an unsecured loan, nothing in clause (a) or (b) shall be deemed to require the creditor to repay any amount so paid or allowed in excess or to reduce the amount of the principal of the loan.

Transfer of equity of redemption of a mortgagor by sale otherwise than in execution of a decree. 9. If the equity of redemption of a mortgagor is transferred by sale otherwise than in execution of a decree, and, if out of the consideration money for the transfer any amount due under the mortgage in respect of interest for any period preceding the date of transfer is left in deposit with the transferee for payment to the mortgagee, the portion of the amount so left in deposit, which is in excess of the amount which would have been payable as interest at the rate of nine *per centum simple per annum* for such period, shall not, in any suit brought before or after the commencement of this Act, be taken into account for the purposes of section 8 and, notwithstanding anything to the contrary contained in the said section, the mortgagee shall, in any such suit, be entitled to recover the amount of such excess in addition to any amount which he may otherwise be entitled to recover.

Decree may order payment of amount due on mortgage by instalments. 10. Notwithstanding anything to the contrary contained in any other law or in anything having the force of a law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may, subject to the provisions of section 12, order at the time of passing the decree in any suit brought before or after the commencement of this Act relating to a mortgage by which any loan is secured that any amount decreed in such suit shall be paid

in such number of instalments and subject to such conditions and on such dates as it considers fit.

Power to direct payment of amount due in respect of a loan or on mortgage by instalments. 11. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may, subject to the provisions of section 12, direct at any time on the application of the judgment-debtor, after notice to the decree-holder, that the amount of any decree passed before or after the commencement of this Act, in respect of a loan, including any decree in a suit relating to a mortgage by which a loan is secured, shall be paid in such number of instalments and subject to such conditions and on such dates as it considers fit.

Circumstances which Court should consider in fixing instalments. 12. Before fixing the instalments referred to in sections 10 and 11, the Court shall take into consideration the circumstances of the judgment-debtor, the amount of the decree and the capacity of the judgment-debtor to pay the instalments on the due dates.

Court to estimate the value of judgment-debtor's property 13. (1) When an application is made before or after the commencement of this Act for the execution of a decree passed in respect of a loan or interest on a loan by the sale of the judgment-debtor's property, the Court executing the decree shall, notwithstanding anything to the contrary contained in any other law or in anything having the force of law, hear the parties to the decree and estimate the value of such property and of that portion of such property the proceeds of the sale of which it considers will be sufficient to satisfy the decree.

Provided that the Court may order the whole property of the judgment-debtor to be sold if it is satisfied that by reason of the nature of such property or any other special circumstances such property cannot reasonably and conveniently be sold in part.

(2) Any person aggrieved by an order passed under sub-section (1) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie.

Only sufficient portion of judgment debtor's property to be sold. 14. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, the proclamation of the intended sale of property in execution of a decree passed before or after the commencement of this Act in respect of a loan or the interest on a loan shall include only so much of the property of the judgment-debtor the proceeds of the sale of which the Court considers will be sufficient to satisfy the decree and shall state the value of the property or portion of the property to be sold, as determined under section 13 and such property or portion of the property, as the case may be, shall not be sold at a price lower than the price specified in the said proclamation.

Provided that if the property to be sold is immovable and the decree-holder specifies which portion of such property should be sold, the Court shall order that such portion or so much of such portion as may seem necessary to satisfy the decree shall be sold.

Provided further that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation, the Court may sell the property for such highest amount if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation.

Exemption of portion of holding from attachment or sale in execution of decree. 15. (1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, where a decree is passed before or after the commencement of this Act for the payment by an agricultural debtor of the amount due on any loan advanced to him by a money-lender, the Court executing the decree—

(i) shall exempt from sale one acre of the land comprised in the holding or holdings of the judgment-debtor, if the area of such land does not exceed three acres ; and

(ii) shall exempt one acre, and may exempt any further portion of such land if the area of such land exceeds three acres ; provided that the total area exempted from the sale does not exceed one-third of the total area of such land.

(2) For the purposes of this section “ agricultural debtor” means a *raiyat*, the total area of whose holding or holdings does not exceed such area as the Provincial Government may fix for the district or part of the district in which such holding or holdings are situate.

CHAPTER III.

MISCELLANEOUS.

Saving of Court's powers under the Usurious Loans Act, 1918. 16. Save as otherwise provided in section 8, nothing in this Act shall affect the powers of a Court under the **X of 1918.**

Payment of loan in cash to a debtor, etc., to be made in the presence of the sub-registrar. 17. Where a loan is advanced on a registered document, the entire amount of the loan, or as much of it as may be payable in cash, shall be paid to the debtor or his duly authorised agent in the presence of the sub-registrar who will register the document and the said sub-registrar shall make an endorsement to that effect on the document.

Illustration.—The consideration for a mortgage bond for Rs. 5,000 is made up of the following sums :

- (i) Rs. 1,000 already paid to the mortgagor several days before the execution of the bond ;
- (ii) Rs. 1,500 to be paid to him in cash at the time of the execution of the bond ; and
- (iii) Rs. 2,500 to be paid to him in future as and when required by him.

Only the second out of these three sums (namely the sum of Rs. 1,500 to be paid at the time of the execution of the bond).

shall be payable to the mortgagor or his duly authorised agent in the presence of the sub-registrar who will register the document. §

repeals.

18. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

SCHEDULE

Year	Number	Subject or short title	Extent of repeal
1	2	3	4
1938	III	The Bihar Money-lenders Act, 1938.	In section 2, clause (b), (c), (e), (k) and (n); Chapter III; and sections 22 and 26.
1938	V	The Bihar Money-lenders (Amendment and Application to Pending Suits and Proceedings) Act, 1938.	The whole.

BOMBAY MONEY-LENDERS ACT, 1946

Bombay Act No. XXXI of 1947.

(AS AMENDED BY THE BOMBAY ACT NO. LVIII OF 1948.)

An Act to regulate the transactions of money-lending in the Province of Bombay.

WHEREAS it is expedient to make better provision for the regulation and control transactions of money-lending in the Province of Bombay; It is hereby enacted as follows :—

Short title and extent and commencement. 1. (1) This Act may be called the Bombay Money-lenders Act, 1946.

(2) It extends to the whole of the Province of Bombay.

(3) It shall come into force on such date as the Provincial Government may by notification in the *Official Gazette* appoint in this behalf.

Definitions 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “bank” means a banking company as defined in section 277 F of the Indian Companies Act, 1913, whether incorporated in or outside British India ; **VII of 1913**

(2) “business of money-lending” means the business of advancing loans whether or not in connection with or in addition to any other business ;

(3) “capital” means a sum of money which a money-lender invests in the business of money-lending ;

(4) “company” means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent, or by an Act of the Legislature of a British Possession. **VII of 1913**

(5) “co-operative society” means a society registered or deemed to have been registered under the Bombay Co-operative Societies Act, 1925, or the Co-operative Societies Act, 1912 or any Act of any other Provincial Legislature relating to co-operative societies ; **Bombay VII of 1925**
II of 1912

(6) “interest” includes any sum, by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged by a money-lender or on account of costs, charges or expenses in accordance with the provisions of this Act, or any other law for the time being in force ;

Bombay Money-Lenders Act, 1946

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- (7) "licence" means a licence granted under this Act;
- (8) "licence fee" means the fee payable in respect of a licence ;
- (9) "loan" means an advance at interest by way of credit, whether of money or in kind, but does not include—
- (a) a deposit of money or other property in a Government Post Office Bank or in any other bank or in a company or with a co-operative society ;
 - (b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or any other enactment relating to a public, religious or charitable object ; XXI of 1860
 - (c) a loan advanced by Government or by any local authority authorised by Government ;
 - (d) a loan advanced by a co-operative society ;
 - ¹[(d1) an advance made to a subscriber to, or a depositor in, a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund;
 - (d2) a loan to or by an insurance company as defined in the Insurance Act 1938 ;] IV of 1938
 - (e) a loan to, or by a scheduled bank ;
 - (f) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ; XXVI of 1881
 - (g) except for the purposes of sections 23 and 25, a loan to a trader ;
- (10) "money-lender" means—
- (i) an individual or
 - (ii) an undivided Hindu family or
 - (iii) a bank or
 - ²[(iii) a company or].
 - (iv) an unincorporated body of individuals, who or which—
 - (a) carries on the business of money-lending in the Province ; or
 - (b) has his or its principal place of such business in the Province ;
- (11) "prescribed" means prescribed by rules made under this Act ;
- (12) "principal" means in relation to a loan the amount actually advanced to the debtor ;

¹ Ins. by S. 2 of Bombay Act LVIII of 1948.² Ins. by S. 2 of Bombay Act LVIII of 1948.

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¹[(12A) "Provident Fund" means a Provident Fund as defined in the Provident Funds Act, 1925, & includes a Government Provident Fund & a Railway Provident Fund as defined in the said Act].

(13) "Province" means the Province of Bombay ;

(13A) "recognised language" means in Greater Bombay Marathi or Gujarati and elsewhere the language of the Court ;

(14) "register" means a register of money-lenders maintained under section 4 ;

(15) "rules" means rules made under this Act ;

(16) "scheduled bank" means a bank included in the second schedule to the Reserve Bank of India Act, 1934 ;

(17) "suit to which this Act applies" means any suit or proceeding—

(a) for the recovery of a loan made after the date on which this Act comes into force ;

(b) for the enforcement of any security taken, or any agreement, made after the date on which this Act comes into force in respect of any loan made either before or after the said date ; or

(c) for the redemption of any security given after the date on which this Act comes into force in respect of any loan made either before or after the said date ;

(18) "trader" means a person who in the regular course of business buys and sells goods or other property, whether moveable or immoveable, and includes—

a wholesale or retail merchant,

a commission agent,

a broker,

a manufacturer,

a contractor,

a factory owner,

but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use.

Explanation.—For the purposes of this clause an "artisan" means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.

¹ Ins. by S. 2 of Bombay Act LVIII of 1948.

Bombay Money-Lenders Act, 1946

[BOM. ACT XXXI OF 1947]

Appointment of Registrar General, Registrars and Assistant Registrars.

3. The Provincial Government may, by notification in the Official Gazette appoint such persons, whether public officers or not, as it thinks proper, to be a Registrar General, Registrars and Assistant Registrars of money-lenders for the purposes of this Act and may define the areas within which each such officer shall exercise his powers and perform his duties.

Register of money-lenders.

4. Every Assistant Registrar shall maintain for the area in his jurisdiction a register of money-lenders in such form as may be prescribed.

Money-lenders not to carry on business of money-lending except for area under licence and except in accordance with terms of licences.

5. No money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence ;

6. (1) Every money-lender shall annually before such date as may be prescribed make an application in the prescribed form for the grant of a licence to the Assistant Registrar ¹[within the limits of which, the place where he intends to carry on the business of money-lending or if he intends to carry on such business at more than one place in the area, the principal place of such business is situated.] Such application shall contain the following particulars, namely :—

- (a) the name in which such money-lender intends to carry on business and the name of the person proposed to be responsible for the management of the business ;
- (b) if the application is by or on behalf of—
 - (i) an individual, the name and address of such individual ;
 - (ii) an undivided Hindu family, the names and addresses of the manager and the adult coparceners of such family ;
 - (iii) a bank ²[or company] the names and addresses of the directors, manager or principal officer managing it ;
 - (iv) an unincorporated body of individuals, the names and addresses of such individuals ;
- (c) the area and the place or principal place of the business of money-lending in the Province ;
- (d) the name of any other place in the Province where the business of money-lending is carried on or intended to be carried on ;

¹ Sub. by S. 3 of Bombay Act LVIII of 1948.

² Ins. by S. 3 of Bombay Act LVIII of 1948.

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(e) whether the person signing the application has himself, or any of the adult coparceners of an undivided Hindu family, or any director, manager or principal officer of the bank¹[or company] or any member of the unincorporated body on behalf of which such application has been made, as the case may be, has carried on the business of money-lending in the Province in the year ending on the 31st day of March immediately preceding the date of the application either individually, or in partnership, or jointly with any other coparcener or any other person and whether in the same or any other name ;

(f) the total amount of the capital which such person intends to invest in the business of money-lending in the year for which the application has been made.

¹["(g) if the places at which the business of money-lending is to be carried on are more than one, the names of persons who shall be in the management of the business at each such place." ;]

(2) The application shall be in writing and shall be signed—

(a) (i) if the application is made by an individual by the individual ;

(ii) if the application is made on behalf of an undivided Hindu family, by the [***]² manager of such family ;

(iii) if the application is made by a bank³[company] or unincorporated body by the managing director or any other person having control of its principal place of business in British India or of its place of business in the area in which it intends to carry on the business ; or

(b) by an agent authorised in this behalf by a power of attorney by the individual money-lender himself, or the family, or the bank⁴[company] or the unincorporated body, as the case may be.

(3) The application shall also contain such other particulars as maybe prescribed.

¹["(4)" The application shall be accompanied by a licence fee at the following rates :—

(a) If the place at which the business of money-lending is to be carried on is not more than one. Rs 5

¹as. by S. 3 of Bombay Act LVIII of 1948.

²deleted by S. 3 of Bombay Act LVIII of 1948.

³as. by S. 3 of Bombay Act LVIII of 1948.

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- (b) If the business of money-lending is to be carried on at more than one place within the limits of the area of the Registrar. Rs. 5 for the licence for the principal place of business, and Rs. 2 for the licence for each of the other places in the area.

Provided that where an application is made after the expiry of the period prescribed by rules in respect of such application, it shall be accompanied by a licence fee at double the rates specified above.

- (5) The fee payable under this section shall be paid in the manner prescribed and shall not be refunded, notwithstanding the fact the grant of licence is refused or the application is withdrawn.

7. (1) ¹On the receipt of an application under section 6 and after making a summary inquiry in accordance with the prescribed procedure, the Assistant Registrar shall forward the application, together with his report, to the Registrar. The Registrar may after making such further inquiry, if any, as he deems fit, grant the applicant a licence in such form and subject to such conditions as may be prescribed ²[**]³ and direct the Assistant Registrar to enter the name of such applicant in the register maintained by him under section 4.

⁴[If the application is in respect of more than one place of business in the area under the jurisdiction of the Registrar, a separate licence in respect of each such place shall be granted in the name of the applicant and the person responsible for the management of the business at such place].

[(2) If the application also contains a request for the grant of a licence to carry on the business of money-lending at any place within the province, but at a place outside the jurisdiction of the Registrar who granted the licence in respect of the principal place of business of the money-lender, the Registrar shall forward copies of the application and of the licence granted to the Registrar having jurisdiction who may grant a licence on payment of the licence fee provided for in section 6 without making any enquiry in respect of the application].

8. (1) The grant of a licence shall not be refused except on any of the following grounds :—

- (a) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a money-lender is disqualified from holding a licence ;
- (b) that the applicant has not complied with the provisions of this Act or the rules in respect of an application for the grant of a licence ;

¹ Renumbered by S. 4 of Bombay Act LVIII of 1948.

² Deleted by S. 4 of Bombay Act LVIII of 1948.

³ Ins. by S. 4 of Bombay Act LVIII of 1948.

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- (c) that the applicant has made wilful default in complying with or knowingly acted in contravention of any requirement of this Act ;
- (d) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of this business of money-lending has—
- (i) knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending, or
- (ii) been found guilty of an offence under Chapter **Act XIV of 1881.** XVII or section 465, 477 or 477-A of Chapter XVIII of the Indian Penal Code.

(2) The Registrar shall, before refusing a licence under sub-section (1), record the evidence adduced before him and his reasons for such refusal.

(3) An appeal shall lie from an order of the Registrar refusing a licence under sub-section (1) to the Registrar General, whose decision shall be final.

Registrar's power to cancel licences.

["8A. (1) The Registrar may, during the term of any licence, cancel the same by an order in writing on the ground that the person to whom it was granted has been guilty of any act or conduct for which he might under section 8 have refused him the grant of the licence and which act or conduct was not brought to his notice at the time of the grant.

(2) Before cancelling a licence under sub-section (1) the Registrar shall give notice in writing to the licensee and may hold such inquiry as may be necessary.

(3) An appeal shall lie from an order of the Registrar cancelling a licence under sub-section (1) to the Registrar General whose decision shall be final."]

Terms of licence.

9. A licence shall be valid from the date on which it is granted to the 31st day of July following.

Stay of suits by money-lenders not holding licence.

10. (1) After the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit filed by a money-lender to which this Act applies unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money-lender held a valid licence.

(2) If during the trial of any such suit, the Court finds that the money-lender had not held such licence, the Court may, on the application of the money-lender, stay the hearing of the suit and require him to produce within a period of three months a licence on payment to the Registrar of all the arrears of the licence fees payable by him under this Act for the period commencing from the date on which he started the business of money-lending or the expiry of six months from the date on which this Act comes into force,

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whichever is later, together with such penalty, not exceeding Rs. 500, as the Court may direct :

Provided that when the Court is satisfied that the failure of the money-lender to obtain a licence was due to any reasonable cause, the Court may direct that no penalty as aforesaid or part of such penalty shall be paid by the money-lender.

(3) The Court may, on sufficient cause being shown, from time to time extend the period during which the money-lender shall be required to produce a licence.

(4) If the money-lender fails to produce the licence required under sub-section (2) within the period specified therein or within such period as may be extended under sub-section (3), the Court shall dismiss the suit. If the money-lender produces such licence within the aforesaid period, the Court shall proceed to hear the suit.

(5) Nothing in this section shall affect—

(a) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force ;

(b) the powers of a Court of Wards, or a manager of an estate taken under management under the Broach and Kaira Encumbered Estates Act, 1881, or the Gujarat Talukdars Act, 1888, or an Official Assignee, a receiver, an administrator or a Court under the provisions of the Presidency-towns Insolvency Act, 1909, of the Provincial Insolvency Act, 1920, or of a liquidator under the Indian Companies Act, 1913, to realise the property of a money-lender.

Bombay
XXI of
1881
Bombay
VI of
1888
III of
1909
V of
1920
VII of
1912

Entry in register and grant of licence to a moneylender directed to obtain licence under section 10.

11. Any money-lender who is required under sub-section (2) of section 10 to produce a licence shall make an application to the Registrar through the Assistant Registrar in the manner specified in section 6 and on receipt of such application the Registrar may, subject to the provisions of section 8, and after making such inquiry as he deems fit, grant the money-lender on payment of the arrears of licence fee, and the penalty, if any, directed by the Court to be paid, a licence in the form and subject to the conditions specified in section 7 and direct the Assistant Registrar to enter the name of the money-lender in the register.

Application for cancellation of licence.

12. (1) Any person may, during the currency of a licence, file an application, to the Registrar General for the cancellation of the licence issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar may under section 8 refuse him the grant of a licence. At the time of filling his application the said person shall deposit such amount not exceeding Rs. 100 as the Registrar General may deem fit.

(2) On the receipt of such application and deposit the Registrar General shall hold an inquiry and if he is satisfied that the money-lender has been guilty of such act or conduct

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he may direct the Registrar to cancel the licence of the money-lender and may also direct the return of the deposit made under sub-section (1).

(3) If in the opinion of the Registrar General, an application made under sub-section (1) is frivolous or vexatious, he may, out of the deposit made under sub-section (1), direct to be paid to the money-lender such amount as he deems fit as compensation.

Registrar
General,
Registrar
and
Assistant
Registrar to
have powers
of Civil
Court.

13. For the purposes of section 7 the Registrar and Assistant Registrar, and for the purposes of section 12 the Registrar General, shall have and may exercise the same powers as are vested in a Civil Court under the Code of V of 1908. Civil Procedure, 1908, in respect of the following matters :—

- (a) enforcing the attendance of any person and examining him on oath ;
- (b) compelling the production of documents and material objects ;
- (c) issuing commissions for the examination of witnesses ; and
- (d) proof of facts by affidavits.

Power of
authorized
officer to
require
production
of record or
document.

1[“13A. For the purpose of verifying whether the business of money-lending is carried on in accordance with the provisions of this Act, any Registrar, Assistant Registrar or any other officer authorised by the Provincial Government in this behalf may require any money-lender to produce any record or document in his possession which in his opinion is relevant for the purpose and thereupon such money-lender shall produce such record or document. The Registrar, Assistant Registrar or officer so authorised may after reasonable notice at any reasonable time enter any premises where he believes such record or document to be and may ask any question necessary for interpreting or verifying such record.”]

Court's
power to
cancel or
suspend a
licence.

14. (1) (i) A Court passing an order of conviction against a money-lender for an offence under this Act, or

(ii) a Court trying a suit to which this Act applies if satisfied that such money-lender has committed such contravention of the provisions of this Act or the rules as would, in its opinion, make him unfit to carry on the business of money-lending—

(a) may order that all the licences held by such money-lender in the Province be cancelled or suspended for such time as it may think fit ; and

(b) may, if it thinks fit, declare any such money-lender, or if any money-lender is an undivided Hindu family, a bank ²[company] or an unincorporated body, such family, bank or body and also any person responsible for the management of the business of money-lending carried on by such family, bank or body, to

¹ Ins. by S. 6 of Bombay Act LVIII of 1948.

² Ins. by S. 7 of Bombay Act LVIII of 1908.

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be disqualified from holding any licence in the Province for such time as the Court may think fit.

(2) Where a Court convicts a money-lender of an offence under this Act, or makes an order or declaration under clause (a) or (b) of sub-section (1), it shall cause the particulars of the conviction, order or declaration, as the case may be, to be endorsed on all the licences held by the money-lender convicted or by any other person affected by the order or declaration and shall cause copies of its order or declaration to be sent to the Registrars by whom the licences were granted for the purpose of entering such particulars in the registers :

Provided that where any licence held by any money-lender is suspended or cancelled or any money-lender is disqualified from holding any licence under this section he may appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order ; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(3) Any licence required by a Court for endorsement in accordance with sub-section (2) shall be produced by the person by whom it is held in such manner and within such times as may be directed by the Court and any person who, without reasonable cause, makes default in producing the licence so required shall be liable, on conviction, to a fine not exceeding Rs. 500 for each day for the period during which the default continues.

(4) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

No compensation for suspension or cancellation of licences.

15. Where any licence is suspended or cancelled under this Act, no person shall be entitled to any compensation or the refund of any licence fee.

Persons debarred from doing business during period of suspension or cancellation of licence.

16. A person whose licence has been suspended or cancelled in accordance with the provisions of this Act shall during the period of suspension or cancellation, as the case may be, be disqualified from holding any licence in the Province.

Person whose licence is suspended or cancelled not to apply without giving particulars of endorsement or of disqualification.

17. No person whose licence has been endorsed under section 14 or who has been disqualified from holding a licence shall apply for, or be eligible to hold a licence, without giving particulars of such endorsement or disqualification.

Duty of money-lender to keep accounts, and furnish copies.

18. (1) Every money-lender shall keep and maintain a cash book and a ledger in such form and in such manner as may be prescribed.

(2) Every money-lender shall—

(a) deliver or cause to be delivered—

(i) to the debtor within 30 days from the date on which a loan is made, a statement in any recognised language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money-lender and the rate of interest charged ;

(ii) to the Assistant Registrar, within the said period a copy of the said statement ;

(b) upon repayment of a loan in full, mark indelibly every paper signed by the debtor with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every note and cancel or reassign every assignment given by the debtor as security for the loan.

(3) No money-lender shall receive any payment from a debtor on account of any loan without giving him a plain and complete receipt for the payment.

(4) No money-lender shall accept from a debtor any article as a pawn, pledge or security for a loan without giving him plain signed receipt for the same with its description, estimated value, the amount of a loan advanced against it and such other particulars as may be prescribed.

Delivery
of statement
of accounts
and copies
thereof by
money-len-
der.

19. (1) Every money-lender shall deliver or cause to be delivered every year to each of his debtors a legible statement of such debtor's accounts signed by the money-lender or his agent of any amount that may be outstanding against such debtor. The statement shall show—

(i) the amount of principal and the amount of interest, separately, due to the money-lender ;

(ii) the amount of every payment already received by the money-lender in respect of the loan during the year together with the date on which each payment was made ;

(iii) all payments credited first in the account of interest and the residue, if any, of any payment more than sufficient to discharge the balance of interest due at the time it is made, credited to the debtor in the account of principal ;

(iv) the amount of principal remaining unpaid and the interest thereon.

The statement shall be signed by the money-lender, or his agent, and shall be in any recognised language. It shall be in such form and shall be supplied to the debtor on or before such date as may be prescribed.

The money-lender shall on or before the aforesaid date deliver or cause to be delivered a copy of each such statement to the Assistant Registrar.

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(2) In respect of any particular loan, whether advanced before or after the date on which this Act comes into force, the money-lender shall, on demand in writing being made by the debtor at any time during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor, or if the debtor so requires to any person specified in that behalf in the demand, a statement, in any recognised language, signed by the money-lender or his agent, and containing the relevant particulars specified in sub-section (1).

(3) A money-lender shall, on a demand in writing by the debtor, and tender of the prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor to the debtor, or if the debtor so requires to any person specified in that behalf in the demand.

(4) For the purposes of this section "year" means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

Fees for certain statements supplied to debtors and Assistant Registrars.

1["19A. (1) A money-lender may recover from a debtor fees for the statements supplied to him under sub-section (2) of section 18 or sub-section (1) of section 19 and in respect of copies of such statements supplied to the Assistant Registrar under the said sub-sections.

(2) Such fees shall be recoverable at such rates and in such manner as may be prescribed, subject to the maximum of two rupees per debtor, per year, irrespective of the number of statements or copies thereof supplied to the debtor or the Assistant Registrar during the relevant year."]

Debtor not bound to admit correctness of accounts.

20. A debtor to whom a statement of accounts has been furnished under section 19 shall not be bound to acknowledge or deny its correctness and his failure to do shall not, by itself, be deemed to be an admission of the correctness of the accounts.

Procedure of Court in suits regarding loans.

21. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

(a) a Court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of section 18 and 19 ;

(b) if the Court finds that the provisions of section 18 or section 19 have not been complied with by the money-lender, it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs.

Explanation.—A money-lender who has given the receipt or furnished a statement of accounts in the prescribed form and manner, shall be held to have complied with the provisions of section 18 or section 19, as the case may be,

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Provisions of certain sections not to apply to loans made by bank (company) or unincorporated body exempted by Government: in spite of any errors and omissions, if the Court finds that such errors and omissions are not material or not made fraudulently.

22. Nothing in sections 18 to 21 shall apply to loans advanced by any bank [company] or unincorporated body which the Provincial Government may by notification in the *Official Gazette* exempt from the operation of those sections.

Power of Court to limit interest recoverable in certain cases. 23. Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan whether advanced before or after the date on which this Act comes into force, decree, on account of interest a sum greater than the principal of the loan due on the date of the decree.

Power of Court to direct payment of decretal amount by instalments. 24. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court may, at any time, on application of a judgment debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the date on which this Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit. V of 1908.

Limitation of Rates of Interest. 25. (1) The Provincial Government may from time to time by notification in the *Official Gazette* fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

Provided that the maximum rate of interest shall not exceed 6 per cent. per annum in the case of secured loans and 9 per cent. per annum in the case of unsecured loans:

(2) Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the Provincial Government under sub-section (1) shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

Prohibition of charge for expenses on loans by money-lenders. 26. No money-lender shall receive from a debtor or intending debtor any sum other than reasonable costs of investigating title to the property, costs of stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between the parties includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force. IV of 1882.

Notice and formation to be given in assignment of coll. 27. (1) Where a loan advanced, whether before or after the date on which this Act comes into force, or any interest of such loan or the benefit of any agreement made or security

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taken in respect of such loan or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

- (a) give the assignee notice in writing that the loan interest, agreement or security is affected by the operation of this Act ;
- (b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act ; and
- (c) give the debtor notice in writing of the assignment supplying the name and address of the assignee.

(2) Any person acting in contravention of the provisions of sub-section (1) shall be liable to indemnify any other person who is prejudiced by the contravention.

Application
of Act as
respects
assignees.

28. (1) Save as hereinafter provided, where any debt due to a money-lender in respect of money lent by him whether before or after the date on which this Act comes into force or of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, has been assigned, the assignee shall be deemed to be the money-lender and all the provisions of this Act shall apply to such assignee as if he were the money-lender.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, where for any reason any such assignment is invalid and the debtor has made any payment of money or transfer of property on account of any loan which has been so assigned, the assignee shall in respect of such payment or transfer be deemed to be the agent of the money-lender for all the purposes of this Act.

Reopening
of transac-
tions.

29. Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard *ex parte* or otherwise—

- (a) reopen any transaction, or any account already taken between the parties ;
- (b) take an account between the parties ;
- (c) reduce the amount charged to the debtor in respect of any excessive interest ;
- (d) if on taking accounts it is found that the money-lender has received more than what is due to him pass a decree in favour of the debtor in respect of such amount ;

Provided that in the exercise of these powers, the Court shall not—

- (i) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than six years from the date of the suit ;
- (ii) do anything which affects any decree of a Court.

Explanation—For the purpose of this section “excessive

interest" means interest at a rate which contravenes any of the provisions of section 25.

30. (1) Any debtor may make an application at any time to the Court, whether the loan to which the suit relates has or has not become payable, for taking accounts and for declaring the amount due to the money-lender. Such application shall be in the prescribed form and accompanied by the prescribed fee.

(2) On receipt of such application, the Court shall cause a notice of the application to be given to the money-lender.

(3) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall after taking an account of the transactions between the parties pass an order declaring the amount, if any, still payable by the debtor to the money-lender, in respect of the principal and interest, if any. In taking accounts under this section the Court shall follow the provisions of sections 18 to 29.

Deposit in Court of money due to money-lender.

31. (1) At any time a debtor may tender to a money-lender any sum of money due from him to the money-lender in respect of a loan by way of principal, interest or both.

(2) If the money-lender refuses to accept any sum so tendered, the debtor may deposit the said sum in Court to the account of the money-lender.

(3) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and he may, on presenting a petition stating the sum then due in respect of the loan, and his willingness to accept the said sum, receive and appropriate it first towards the interest and the residue if any towards the principal.

(4) When the money-lender does not accept the sum, the Court shall appropriate the said sum first towards the interest and the residue if any towards the principal.

Entry of wrong sum in bond etc. to be an offence.

32. (1) No money-lender shall take any promissory note, acknowledgment, bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or execute any instrument in which blanks are left to be filled after execution.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs. 1,000 or with imprisonment of either description which may extend to six months or with both.

Penalty for molestation.

33. (1) Whoever molests, or abets the molestation of a debtor for the recovery of a debt due by him to a creditor shall, on conviction, be punishable with imprisonment of either description which may extend to three months or with fine which may extend to Rs. 500 or with both.

Explanation.—For the purposes of this section a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing—

(a) obstructs or uses violence to or intimidates such other person, or

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(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or

(c) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person,

shall be deemed to molest such other person :

Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.

(2) Notwithstanding anything contained in the Second Schedule to the Code of Criminal Procedure, 1898, an offence under this section shall be cognizable. V of 1898.

General provision regarding penalties.

34. Whoever fails to comply with or acts in contravention of any provision of this Act, shall, if no specific penalty has been provided for in this Act, be punishable—

(a) for the first offence with fine which may extend to Rs. 200,

(b) for the second offence with fine which may extend to Rs. 500, and

(c) for any subsequent offence with rigorous imprisonment which may extend to three months and with fine.

Offences by corporation etc.

35. If the person contravening any of the provisions of this Act is an undivided Hindu family or a bank, ¹[or a company] or an unincorporated body, the person responsible for the management of the business of such family, bank, [company] or body shall be deemed to be guilty of such contravention.

Arrest and imprisonment in execution of decree for money, against agricultural debtors abolished.

36. Notwithstanding any law for the time being in force, no debtor who cultivates land personally and whose debts do not exceed Rs. 15,000 shall be arrested or imprisoned in execution of a decree for money passed in favour of a money-lender, whether before or after the date on which this Act comes into force.

Explanation.—“To cultivate personally” has the meaning assigned to it in clause (11) of section 2 of the Bombay Tenancy Act, 1939. Bombay XXIX of 1939.

Every officer to be public servant.

37. Every officer of the Crown acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Provisions of Bombay XXVIII of 1939 saved.

38. Nothing in this Act shall affect any of the provisions of the Bombay Agricultural Debtors Relief Act, 1939, and no Court shall entertain or proceed under this Act with any suit or proceeding relating to any loan in respect of which debt adjustment proceedings can be taken under the said Act.

Bombay XXVIII of 1939.

¹ Ins. by S. 10 of Bombay Act LVIII of 1948.

39. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters :—

- (a) the form of the register under section 4 ;
- (b) the form of the application for a licence, the further particulars to be included therein ¹[and the manner of payment of licence fee] under section 6 ;
- (c) the form and conditions of the licence the manner of payment of licence fee and the procedure for a summary inquiry under section 7 ;
- (d) the form of cash book and ledger and the manner in which they should be maintained under sub-section (1), and the other particulars to be prescribed under sub-section (1), of section 18 ;
- (e) the form of the statement of accounts to be furnished and the date before which it is to be furnished under sub-section (1), the fee to be paid under sub-section (2), and the sum of expenses to be paid under sub-section (3), of section 19 ;
- ¹["(ee)" the rates at which and the manner in which fees may be recovered under section 19A ;".]
- (f) the form of application and the fee to be paid under sub-section (1) of section 30 ;
- (g) any other matter which is or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.

(3) The rules made under this section shall, subject to the condition of previous publication, be published in the Official Gazette.

(4) The rules made under this section shall be laid before each Chamber of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Chambers concur and such rule shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly.

¹ Ins. by S. 11 of Bombay Act LVIII of 1948.

THE USURIOUS LOANS (MADRAS AMENDMENT) ACT 1936

Madras Act No. VIII of 1937

An Act to amend the Usurious Loans Act, 1918, in its application to the Presidency of Madras, for certain purposes

WHEREAS it is expedient to amend the Usurious Loans Act, X of 1918, in its application to the Presidency of Madras, for X of 1918, the purposes hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

title,
it and
cation.

1. (1) This Act may be called the Usurious Loans (Madras Amendment) Act 1936.

(2) It extends to the whole of the Presidency of Madras.

(3) The provisions of this Act shall apply to all suits to which the Usurious Loans Act, 1918 (hereinafter referred to as the said Act), would apply and which are pending on, or are instituted on or after, the date of the commencement of this Act. X of 1918.

2. In section 3 of the said Act :—

(i) in Sub-section (1), for the marks, letters, and brackets beginning with “has reasons to believe”, and ending with “any of the following powers, namely may”, the following shall be substituted, namely:—

“has reasons to believe that the transaction was as between the parties thereto, substantially unfair, the Court shall exercise one or more of the following powers, namely,———”;

(ii) The *Explanation* to the same sub-section shall be remembered as *Explanation II*, the following shall be inserted as *explanation I*, namely :—

“*Explanation I*.—If interest is excessive, the court shall presume that the transaction was substantially unfair, but such presumption may be rebutted by proof of special circumstances justifying the rate of interest.”;

(iii) to clause (b) of Sub-section (2) the following proviso shall be added, namely :—

“Provided that in the case of loans to agriculturists, if compound interest is charged, the courts shall presume that the interest is excessive”; and

(iv) The *Explanation* to clause (d) of the same Sub-section shall be omitted.

THE MADRAS DEBTORS PROTECTION ACT* 1934

[Madras Act No. VII of 1935.]¹

(AS MODIFIED UP TO 1ST JULY 1944).

An Act for the protection of certain classes of debtors in the Presidency of Madras.

WHEREAS it is expedient to make provision for the protection of certain classes of debtors in the Presidency of Madras and for that purpose to regulate the keeping of accounts by certain classes of creditors ;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Madras Debtors' Protection Act, 1934.

(2) It extends to the whole of the Presidency of Madras.

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nt.

(3) It shall come into force on such date as the ²[Provincial Government] may, by notification in the ³[Official Gazette], appoint.

definition.

2. In this Act, unless there is anything repugnant in the subject or context.

(1) "bank" means a company carrying on the business of banking and—

(a) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature ;

(2) "company" means a company—

(a) registered under any of the enactments relating to companies for the time being in force in the United

[For Statement of Objects and Reasons, See Fort George Gazette, Part IV, dated 30th Oct 1932, pages 127-128 : for Proceedings in Council See Proceedings of the Madras Legislative Council, Volume LXII, dated 3rd August 1932, pages 209-210 : for Report of the Select Committee, See Fort St. George Gazette, Part IV, dated 16th January 1934 pages 22-27 : for proceeding in Council, See Proceedings of the Madras Legislative Council Volume LXXII, dated 1st August 1934, pages 45-93 and dated 3rd August 1934, pages 235-263 and Volume LXXIII, dated 24th October 1934, pages 279-289.]

The Madras Debtors Protection (Amendment) Act, 1935 (Madras Act IV.

[For Statement of Objects and Reasons, See Fort St. George Gazette (Extraordinary), dated 3rd August 1935, pages 2-3 : for Proceedings of the Council, Volume LXXXVII, dated 4th August 1935, pages 576-592 and 594-595].

¹ For the modifications subject to which this Act will apply in any area to which the provisions of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943) have been applied, see section 23 of the Madras Pawnbrokers Act 1943.

² These words were substituted for the word "Local Government" by paragraph 5 (1) of Government of India (Adaptation of Indian Laws) Order, 1927.

³ These words were substituted for the words "Fort St. George Gazette" by *ibid*.

Madras Debtors Protection Act, 1934

[MADRAS ACT VII of 1934]

Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India or

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature ;

¹[.....]

(3) "co-operative society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 ; Madras Act VI of 1932

(4) "Court" includes a Court acting in the exercise of insolvency jurisdiction ;

(5) "creditor" means a person including a pawnbroker who in the regular course of business advances a loan and includes the legal representative and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan ;

(6) "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a creditor for or on account of costs, charges, or expenses, but save as aforesaid includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a creditor in consideration of or otherwise in respect of a loan ;

(7) "loan" means an advance of money or in kind at interest, being for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction, and includes any transaction which the Court finds in substance to amount to such an advance, but does not include—

(i) a deposit of money or other property in a Government Post Office Savings Bank, or in a bank, in a company or with a co-operative society ;

(ii) an advance made by a bank, a company or a co-operative society ;

(iii) an advance made by Government or by any person authorized by Government to make advances in their behalf, or by any local authority ;

(iv) an advance made by any person *bona fide* carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business ;

(v) an advance made by a landlord to his tenant, by a lessor to his lessee, by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture ;

(vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ; XXVI of 1881.

The words "and includes a life assurance company to which the Indian Life Assurance Companies Act, 1912, applies" were omitted by sub-section (1) of section 23 of the Madras Pawnbrokers Act, 1943 (Madras Act XXIII of 1943).

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[MADRAS ACT VII of 1935]

(8) "pawnbroker" means a person who carries on the business of taking goods and chattels in pawn for a loan ;

(9) "pawner" means a person delivering an article for pawn to a pawnbroker ;

(10) "prescribed" means prescribed by rules made under this Act ; and

(11) "principal" means in relation to a loan the amount actually lent to the debtor.

3. (1) Every creditor shall—

Duty of
creditor to
maintain acc-
ounts and to
give receipts

(a) regularly record and maintain or cause to be recorded and maintained, an account showing for each debtor separately —

(i) the date of the loan, the amount of the principal of the loan, and the rate per cent per annum of interest charged on the loan ; and

(ii) the amount of every payment received by the creditor in respect of the loan, and the date of such payment ;

(b) give to the debtor or his agent, a receipt for every sum paid by him, duly signed and if necessary, stamped at the time of such payment ; and

(c) on requisition in writing made by the debtor, furnish to the debtor or, if he so requires, to any person mentioned by him in that behalf in his requisition, a statement of account signed by himself or his agent showing the particulars referred to in clause (a) and also the amount which remains outstanding on account of the principal and of interest and charge such sum as the¹[Provincial Government] may prescribe as fee therefor.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in clause (a) of sub-section (1) certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account. I of 1937

(3) A person to whom a statement of account has been furnished under clause (c) sub-section (1) and who fails to object to the correctness of the account shall not by such failure alone be deemed to have admitted the correctness of such account.

Additional accounts to be maintained by pawnbrokers. 4. (1) Every pawnbroker shall regularly record and maintain an account in which, in addition to the particulars referred to in clause (a) of sub-section (1) of section 3, he shall record or cause to be recorded —

(a) a full and detailed description of the article or of each of the articles taken in pawn,

(b) the time agreed upon for the redemption of the pawn, and

¹ These words were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

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[MADRAS ACT VII of 1934]

(c) the name of the pawner and, where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.

(2) A copy of the entries in such account shall be delivered by the pawnbroker to the pawner at the time of the pawn on tender of such sum as the [Provincial Government] may prescribe as the charge therefor.

Figures in accounts and receipts to be in Arabic numerals

5. In the receipt to be given under clause (b) of sub-section (1) of section 3, in the statement of account to be furnished under clause (c) of that sub-section and in the copy of the entries to be delivered under sub-section (2) of section 4, the figures shall be entered only in Arabic numerals.

Penalty for non-compliance with sections 3 and 4.

6. (1) In any suit or proceeding relating to a loan, if the Court finds that a creditor has not maintained an account as required by clause (a) of sub-section (1) of section 3 or by sub-section (1) of section 4, he shall not be allowed his costs.

(2) If a creditor fails to give to the debtor or his agent a receipt as required by clause (b) of sub-section (1) of section 3 or to furnish, on a requisition made under clause (c) of that sub-section, a statement of account as required therein within one month after such requisition has been made, or if a pawnbroker fails to deliver to the pawner, a copy of the entries as required by sub-section (2) of section 4, he shall not be entitled to any interest for the period of the default.

Presumption in the case of certain loans.

*[6-A. (1) If in any suit or proceeding relating to a loan advanced after the commencement of the Madras Debtors' Protection (Amendment) Act, 1935, it is found that the interest charged exceeds, in the case of a secured loan, nine per cent per annum simple interest and in the case of an unsecured loan, fifteen per cent per annum simple interest, the Court shall, until the contrary is proved, presume for the purposes of sections 3 and 4 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was, as

X of 1918

Explanation.—In the case of any loan so advanced, if compound interest is charged and the amount claimed by the creditor by way of such interest until the date of the institution of the suit or proceeding for the recovery of the loan exceeds the amount of simple interest calculated at the rate of nine per cent per annum or fifteen per cent per annum, as the case may be, the Court shall draw the presumption referred to in this sub-section until the contrary is proved.

(2) The provisions contained in sub-section (1) shall be without prejudice to the powers of the Court under sections 3 and 4 of the Usurious Loans Act, 1918, in cases where the Court has reason to believe that the interest charged, though not exceeding nine per cent per annum simple interest or fifteen per cent per annum simple interest, as the case may be, is excessive and that the transaction was, as between the parties thereto, substantially unfair.]

X of 1918

Savings.

7. Nothing contained in this Act shall apply to any loan advanced before the commencement of this Act.

¹ These words were substituted for the words "local government" by Para 4 (1) of the Government of India (Adaptation of Indian laws) Order 1937.

² Section 6-A was inserted by the Madras Debtors' Protection (Amendment) (Madras Act IV of 1936), Section 2.

The Madras Pawnbrokers Act, 1943

[MADRAS ACT XXII OF 1943]

8. (1) The ¹[Provincial Government] may make rules not inconsistent with this Act for the purpose of carrying out all or any of its purposes.

(2) In particular and without prejudice to the generality of the foregoing power the ²[Provincial Government] may make rules prescribing—

- (a) the sum which may be charged as fee for a statement of account, furnished under clause (c) of sub-section (1) of section 3.
- (b) the manner in which a copy of the account shall be certified for the purpose of sub-section (2) of section 3, and
- (c) the sum which may be charged for a copy of the entries in a pawnbrokers account, to be delivered by the pawnbroker to the pawner under sub-section (2) of section 4.

MADRAS PAWN BROKERS ACT, 1943

MADRAS ACT No. XXIII OF 1943

AS AMENDED BY MADRAS ACT XVI OF 1945 & AS RE-ENACTED BY MADRAS ACT VII OF 1948

An Act to regulate and control the business of Pawnbrokers in the Province of Madras.

WHEREAS it is expedient to make provision for the regulation and control of the business of pawnbrokers in the Province of Madras ;

¹[It is enacted as follows :—]

short title
extent and
commence-
ment.

1. (1) This Act may be called the Madras Pawnbrokers Act, 1943.

(2) It extends to the whole of the Province of Madras.

(3) This section shall come into force at once, and the Provincial Government may, from time to time, by notification in the *Fort St. George Gazette*, apply the remaining provisions of this Act to the whole or any portion of the Province of Madras from such date as may be specified in the notification, and may cancel or modify any such notification.

definitions

2. In this, Act, unless there is anything repugnant in the subject or context—

(1) “City of Madras” includes all places within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Madras ;

¹. Subs. by S. 5 of Madras Act VII of 1948.

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[MADRAS ACT XXIII OF 1943]

(2) "company" means a company—

(a) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India ; or

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature ;

(3) "co-operative society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 ; Madras Act VI of 1932

(4) "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a pawnbroker for or on account of charges, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a pawnbroker in consideration of or otherwise in respect of a loan ;

(5) "loan" means an advance of money or in kind at interest and includes any transaction which the Court finds in substance to amount to such an advance, but does not include—

(i) a deposit of money or other property in a Government Post Office Savings Bank or in a company or with a co-operative society ;

(ii) an advance made by a ¹[banking company as defined in Section 227-F of the Indian Companies Act 1913] or a co-operative society ;

(iii) an advance made by Government or by any person authorized by Government to make advances in their behalf or by any local authority ;

(iv) an advance made by any person *bona fide* carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business ; and

(v) an advance made by a landlord to his tenant, by a lessor to his lessee, or by one partner in cultivation or Co-sharer to another for the purpose of carrying on agriculture ;

(6) "pawnbroker" means a person who carries on the business of taking goods and chattels in pawn for a loan ;

Explanation.—Every person who keeps a shop for the purchase or sale of goods or chattels and who purchases goods or chattels and pays or advances thereon any sum of money, with or under an agreement or understanding expressed or implied that the goods or chattels may be afterwards repurchased on any terms is a pawnbroker within the meaning of this clause ;

(7) "pawner" means a person delivering an article for pawn to a pawnbroker ;

(8) "pledge" means an article pawned with a pawnbroker ;

¹ Subs. by S. 2 of Madras Act XXIII of 1945.

The Madras Pawnbrokers Act, 1943

[MADRAS ACT XXIII OF 1943]

(9) "prescribed" means prescribed by rules made under this Act ;

(10) "principle" in relation to a loan means the amount actually lent to the pawner, ; and

(11) "year" means the financial year.

pawnbroker
to obtain
licence un-
lawfully.

3. (1) No person shall, after the expiry of three months from the date on which the provisions of this Act (other than section 1) come into force in any area, carry on or continue to carry on business as a pawnbroker at any place in such area, unless he has obtained a pawnbroker's licence under this Act.

Explanation.—Where a pawnbroker has more than one shop or place of business, whether in the same town or village or in different towns and villages, he shall obtain a separate pawnbroker's licence in respect of each such shop or place of business. In different towns and villages, he shall obtain a separate pawnbrokers licence in respect of each such shop or place of business.

(2) Every pawnbroker's licence granted under this Act shall expire on the last day of the year for which it was granted, but may be renewed from year to year.

applicant and
holder of
licences.

4. (1) Every application for a pawnbroker's licence shall be in writing and shall be made—

(a) if the shop or place of business for which the licence is applied for is situated in the City of Madras, to the Collector of Madras ; and

(b) if such shop or place of business is situated at any place outside the City of Madras, to the Revenue Divisional Officer having jurisdiction over the area in which the shop or place of business is situated.

(2) The licence shall not be refused except on one or both of the following grounds, namely :—

(a) that the applicant is of bad character.

Explanation.—If any evidence of bad character is adduced against the applicant, he shall be given an opportunity of rebutting such evidence ; and

(b) that the shop or place at which he intends to carry on the business of a pawnbroker or any adjacent house or shop or place, owned or occupied by him, is frequented by thieves or persons of bad character.

(3) Any order refusing a licence may on the application of the aggrieved party be revised—

(a) by the Board of Revenue, in case the order was passed by the Collector of Madras ; and

(b) by the Collector of the district concerned, in other cases.

(4) Every licence shall be granted in such form and subject to such conditions as may be prescribed and on payment of such fee not exceeding twenty-five rupees as the Provincial Government may, from time to time, by notification in the *Fort St. George Gazette*, determine.

The Madras Pawnbrokers Act, 1943

[MADRAS ACT XXIII OF 19

Pawnbrokers
to exhibit
their names
over shops,
etc.

5. Every pawnbroker shall—

- (a) always keep exhibited in large characters over the outer door of his shop or place of business his name with the word Pawnbroker, in the chief language of the locality ; and
- (b) always keep placed in a conspicuous part of his shop or place of business so as to be legible to all persons resorting thereto the information required to be printed on pawn tickets by rules made under this Act, in the chief language of the locality.

Interest and
charges allo-
wed to pawn-
brokers.

6. (1) No pawnbroker shall charge interest in respect of a loan on a pledge at a rate exceeding—

- (a) nine and three-eighth per cent per annum simple interest (that is to say, one and a half pies per rupee per mensem simple interest, or one and a half annas per rupee per annum simple interest) in the case of loans of twenty-five rupees and below ; and
- (b) six and a quarter per cent per annum simple interest (that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest) in other cases.

(2) A pawnbroker may demand and take from the pawner such charges and in such cases as may be prescribed.

(3) A pawnbroker shall not demand or take from the pawner any profit, interest, charge or sum whatsoever, other than the interest due to him and the charges, if any referred to in sub-section (2).

Pawn-ticket
given to paw-
ner.

7. Every pawnbroker shall on taking a pledge in pawn give to the pawner a pawn-ticket in the prescribed form, and shall not take a pledge in pawn unless the pawner takes the pawn-ticket.

Person pro-
ducing pawn-
ticket presu-
med to be en-
titled to re-
deem the
pledge.

8. (1) The holder for the time being of a pawn-ticket shall be presumed to be the person entitled to redeem the pledge, and subject to the provisions of this Act, every pawnbroker shall, on payment of the principal and interest, deliver the pledge to the person producing the pawn-ticket, and he is hereby indemnified for so doing.

(2) Except as otherwise expressly provided in this Act, a pawnbroker shall not be bound to deliver back a pledge unless the pawn-ticket for it is delivered to him.

Protection of
owners and
of pawners
not having
pawn-tickets.

9. (1) The following provisions shall have effect for the protection of owners of articles pawned, and of pawners not having their pawn-tickets to produce :—

- (a) Any person claiming to be the owner of a pledge but not holding the pawn-ticket or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed, or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration (which shall be in the prescribed form) which the pawn-broker shall deliver to him :

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[MADRAS ACT XXIII OF 1943]

Provided that an application shall not be made under this clause where the loan exceeds two hundred and fifty rupees unless the applicant has caused a public notice of his claim, containing such particulars as may be prescribed to be published in the prescribed manner not less than the prescribed number of days before the date of the application.

- (b) If the applicant delivers back to the pawnbroker the declaration duly made before any Magistrate or Judge by the applicant and by a person identifying him, the applicant shall have, as between himself and the pawnbroker, all the same rights and remedies as if he had produced the pawn-ticket :

Provided that such a declaration shall not be effectual for that purpose --

- (i) in cases where the loan exceeds two hundred and fifty rupees, unless the applicant executes a bond with two sureties, to the satisfaction of the pawnbroker or of such authority or person as may be prescribed in this behalf, agreeing to indemnify the pawnbroker in respect of any liability which may be incurred by him by reason of delivering the pledge or otherwise acting in conformity with the declaration ; and

- (ii) in all cases, unless the declaration is duly made and delivered back to the pawnbroker within such period after the delivery of the form to the applicant as may be prescribed.

(c) The pawnbroker is hereby indemnified for not delivering the pledge to any person until the expiration of the period aforesaid.

(d) The pawnbroker is hereby further indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has been notified within the meaning of the Transfer of Property Act, 1882, that the declaration was fraudulent or was false in any material particular.

IV of 1882

(2) Any person making a declaration under sub-section (1), either as an applicant or as identifying an applicant knowing the same to be false in any material particular, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

10. (1) Every pawnbroker shall—

- (a) regularly record and maintain or cause to be recorded and maintained in a pledge book in the prescribed form, an account showing for each pawner separately—

- (i) the date of the loan, the amount of the principal of the loan and the rate of interest charged on the loan per cent per annum or per rupee per mensem or per rupee per annum :

pawnbroker
keep book
, give re-
ceipts, etc.

The Madras Pawnbrokers Act, 1913

[MADRAS ACT XXIII OF 1913]

- (ii) the amount of every payment received by the pawnbroker in respect of the loan, and the date of such payment ;
 - (iii) a full and detailed description of the article or of each of the articles taken in pawn ;
 - (iv) the time agreed upon for the redemption of the pawn ; and
 - (v) the name and address of the pawner, and where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof ;
- (b) keep and use in his business the following documents and books (which shall be in the prescribed form) and enter therein from time to time, as occasion requires, in a fair and legible manner such particulars and in accordance with such directions as may be prescribed :—
- (i) pawn-ticket ;
 - (ii) sale book of pledges ;
 - (iii) declaration where pledge is claimed by owner ;
 - (iv) declaration of pawn-ticket lost ; and
 - (v) receipt on redemption of pledge ;
- (c) give to the pawner or his agent a receipt for every sum paid by him, duly signed and, if necessary, stamped at the time of such payment ; and
- (d) on requisition in writing made by the pawner furnish to the pawner, or if he so requires, to any person mentioned by him in that behalf in his requisition, a statement of account signed by himself or his agent, showing the particulars referred to in clause (a) and also the amount which remains outstanding on account of the principal and of interest, and charge such sum as the Provincial Government may prescribe as fee therefor.

(2) All records or entries made in the books, accounts and documents referred to in sub-section (1) shall be either in English or in such language of the locality as may be prescribed and all such books, accounts and documents and all pledges taken by the pawnbroker shall be open to inspection at any time by any Police Officer not below the rank of Sub-Inspector or by any Head Constable authorized in writing by such a Police Officer.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in clause (a) of sub-section (1), certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account.

1 of 1872

(4) A pawner to whom a statement of account has been furnished under clause (d) of sub-section (1) and who fails to object to the correctness of the account shall not, by such failure alone, be deemed to have admitted the correctness of such account.

The Madras Pawnbrokers Act, 1943

[MADRAS ACT XXIII OF 1943]

(5) In the pawn-ticket furnished to the pawner, in the receipt given under clause (c) of sub-section (1) and in the statement of account furnished under clause (d) of that sub-section, the figures shall be entered only in Arabic numerals.

redemption
of pledge,

11. (1) Every pledge shall be redeemable within one year from the day of pawning, exclusive of that day: and there shall be added to that year of redemption seven days of grace within which every pledge (if not redeemed within the period of redemption) shall continue to be redeemable.

(2) A pledge pawned for a sum not exceeding ten rupees, if not redeemed within the period of redemption and days of grace, shall at the end of the days of grace become the pawnbroker's absolute property.

(3) A pledge pawned for a sum exceeding ten rupees shall further continue to be redeemable until it is disposed of as provided in this Act, although the period of redemption and days of grace have expired.

Explanation.—Where the contract between the parties provides a longer period for redemption than one year, the provisions of sub-sections (1), (2) and (3) shall be read and construed as if references to such longer period had been substituted for the references to the period of one year therein.

sale of pledge
and inspection
of sale
book,

12. (1) A pledge pawned for a sum exceeding ten rupees shall, when disposed of by the pawnbroker, be disposed of by sale by auction and not otherwise and the sale shall be conducted in accordance with such rules as may be prescribed.

(2) A pawnbroker may bid for and purchase at a sale by public auction conducted under sub-section (1), pledge pawned with him, and on such purchase, he shall become the absolute owner of the pledge.

(3) At any time within three years after the public auction, the holder of the pawn-ticket may inspect the entry relating to the sale either in the pawnbroker's book or in such catalogue of the auction as may be prescribed.

(4) (a) Where on such inspection or otherwise the pledge appears to have been sold for more than the amount of the loan and the interest and charges due at the time of the sale, the pawnbroker shall pay to the holder of the pawn-ticket, on demand made within three years after the sale, the surplus after deducting therefrom the necessary cost and charges of the sale,

(b) If on such demand it appears that the sale of the pledge has resulted in a surplus but that within twelve months before or after such sale, the sale of another pledge or pledges of the same person has resulted in a deficit, the pawnbroker may set off the deficit against the surplus and shall be liable to pay only the balance, if any, after such set off.

Liability of
pawnbroker
in case of
fire.

13. (1) Where a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable on application made within the period during which the pledge would have been redeemable, to pay the value of the pledge, after deducting the amount of the principal and interest.

Explanation.—For the purpose of this sub-section the value of the pledge shall be its estimated value (if any) entered in the pledge book at the time of the pawn together with interest on the amount of the principal and shall in no case be less than the aggregate of the amount of the principal and interest and twenty-five per cent on the amount of the principal.

(2) A pawnbroker shall be entitled to insure to the extent of the value so estimated.

Compensation for depreciation of pledge.

14. If a person entitled and offering to redeem a pledge shows to the satisfaction of a Civil Court having jurisdiction to entertain a suit for such redemption that the pledge has become or has been rendered of less value than it was at the time of pawning thereof by or through the default, neglect or wilful misbehaviour of the pawnbroker, the Court may, if it thinks fit, award reasonable compensation to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker (as the case requires) in such manner as the Court directs.

Pawnbroker advancing smaller amount or receiving higher interest than that specified in accounts to be punishable.

15. (1) Any pawnbroker who actually advances an amount less than that shown in the pawn-ticket or in his accounts or registers of who takes or receives interest or any other charge at a rate higher than that shown in the pawn-ticket or in his accounts or registers shall be punished with fine which may extend to five hundred rupees.

(2) If a pawnbroker is convicted of an offence under sub-section (1) after having been previously convicted of such an offence, the Court convicting him may order his licence as pawnbroker to be cancelled.

Certain other acts of pawnbrokers to be punishable.

16. A pawnbroker who—

(1) takes an article in pawn from any person appearing to be under the age of fourteen years, or to be intoxicated ; or

(2) purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker ; or

(3) employs any person under the age of sixteen years to take pledges in pawn ; or

(4) under any pretence purchases, except at a public auction any pledge while in pawn with him ; or

(5) suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it ; or

(6) makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purchase, sale, or disposition thereof within the time of redemption ; or

(7) sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as is authorized by or under this Act ; shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

Certain Acts of Pawnbrokers to be punishable.

17. (1) Any person who—

(a) offers to a pawnbroker an article by way of pawn, being unable or refusing to give a satisfactory

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[MADRAS ACT XXIII OF 1943]

account of the means by which he became possessed of the article ; or

(b) wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article ; or

(c) not being entitled to redeem, and not having any colour of title by law to redeem, a pledge attempts or endeavours to redeem the same ; shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

(2) In every case falling under sub-section (1), and also in any case where, on an article being offered in pawn, for sale, or otherwise, to a pawn broker he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker shall, in the absence of reasonable excuse, inquire into the name and address of the person concerned, and seize and detain such person and the article, if any, and forthwith communicate to the nearest police station the facts of the case and shall deliver the person and the article, if any, seized to the police.

(3) A list of properties believed to have been stolen may be delivered by the police to any pawnbroker licensed under this Act and thereupon it shall be the duty of such pawnbroker—

(a) if any article answering the description of any of the properties set forth in any such list is offered to him in pawn, for sale, or otherwise, to proceed in accordance with the provisions of sub-section (2); and

(b) if any such article is already in his possession, forthwith to communicate to the nearest police station the facts of the case (including full particulars as to the name and address of the person concerned in the delivery of the article to the pawnbroker) and also, if so required by the police, to deliver the article to them.

18. (1) Whoever contravenes any of the provisions of this Act or of any rule or of any terms or conditions of a licence made or granted thereunder, shall, if no other penalty is elsewhere provided in this Act for such contravention, be punished with fine which may extend to fifty rupees, and, if such person has been previously convicted whether under this section or any other provision contained in this Act, with fine which may extend to one hundred rupees.

(2) Any person who after having been convicted of the offence of carrying on, or continuing to carry on, the business of pawnbroker in contravention of the provisions of section 3, continues to commit the same offence in the same year, shall in addition to the fine to which he is liable under sub-section (1) be punished with a further fine which may extend to ten rupees for each day after the previous date of conviction during which he continues so to offend.

(3) Any Court convicting a pawnbroker of a contravention of the provisions of clause (c) or clause (d) of sub-section (1) of section 10, may direct him to furnish a receipt or statement of account in accordance with the provisions of that clause, and if the pawnbroker fails to comply with the direction, the Court may order his licence as a pawnbroker to be cancelled.

Jurisdiction
to try offen-
ces.

19. No Presidency Magistrate not being a salaried Presidency Magistrate and no other Court inferior to that of a Magistrate of the second class shall try any offence against this Act.

Arrest with-
out warrant.

20. Any Police officer may arrest without a warrant any person committing in his view an offence against this Act.

Contracts not
to be void on
account of off-
ences but in-
terest and
costs not to
be allowed in
certain cases.

21. Where a pawnbroker is guilty of an offence against this Act (not being an offence against any provision of this Act relating to licences), any contract of pawn or other contract made by him, in relation to his business of pawnbroker, shall nevertheless not be void by reason only of that offence, nor shall he by reason only of that offence, lose his lien on or right to the pledge or to the loan and the interest and other charges, if any, payable in respect thereof :

Provided that if a pawnbroker fails to deliver to the pawner a pawn-ticket as required by section 7 or fails to give to the pawner or his agent a receipt as required by clause (c) of sub-section (1) of section 10 or to furnish on a requisition made under clause (d) of that sub-section, a statement of account as required therein within one month after such requisition has been made, the pawnbroker shall not be entitled to any interest for the period of his default :

Provided further that if in any suit or proceeding relating to a loan, the Court finds that a pawnbroker has not maintained accounts as required by clause (a) or clause (b) of sub-section (1) of section 10, he shall not be allowed his costs.

Power to
exempt Com-
panies regis-
tered before
first Novem-
ber 1944.

[21 A. The Provincial Government may, by general or a special order, exempt any company incorporated under the *Indian Companies Act 1913*, before the first day of November, 1944, from any of the provisions of this Act or direct that any such provisions shall apply to such company with such modification as may be specified in the order.] Act VII
1913

Power to
make rules.

22. (1) The Provincial Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for —

(a) all matters expressly required or allowed by this Act to be prescribed ;

(b) the form of and the particulars to be contained in, an application for a pawnbroker's licence under this Act ; and

(c) the form in which books, accounts and documents specified in this Act shall be recorded, maintained, kept or used.

The Madras Pawn brokers Act, 1913

[MADRAS ACT XXIII OF 1943]

(3) All rules made under this section shall be published in the *Fort St. George Gazette* and on such publication shall have effect as if enacted in this Act.

Amendment
of Madras Act
VII of 1935.

23. (1) In clause (2) of section 2 of the Madras Debtors' Protection Act 1934, the words and figures "and includes a life assurance company to which the Indian Life Assurance Companies Act, 1912, applies" shall be omitted.

Madras Act
VII of 1935.
Act II of
1912.

(2) In any area to which the provisions of this Act have been applied by a notification under sub-section (3) of section 1, the provisions of the Madras Debtors Protection Act, 1934, shall after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the following modifications, namely:—

Madras Act
VII of 1935.

- (i) in section 2, in clause (5), the words "including a pawnbroker" shall be omitted ;
- (ii) in the same section, clauses (8) and (9) shall be omitted, and clauses (10) and (11) shall be renumbered as clauses (8) and (9) respectively ;
- (iii) section 4 shall be omitted ;
- (iv) in section 5, after the word and figure "section 3" the word "and" shall be inserted, and the words, brackets and figures "and in the copy of the entries to be delivered under sub-section (2) of section 4" shall be omitted ;
- (v) in sub-section (1) of section 6, the words, brackets and figures "or by sub-section (1) of section 4" shall be omitted ;
- (vi) in sub-section (2) of the same section, the words brackets and figures "or if a pawnbroker fails to deliver to the pawner, a copy of the entries as required by sub-section (2) of section 4" shall be omitted;
- (vii) in sub-section (2) of section 8 the word "and" shall be inserted at the end of clause (a) and omitted from the end of clause (b) ;
- (viii) in the same sub-section, clause (c) shall be omitted ; and
- (ix) after section 8, the following section shall be added namely :—

Saving.

"9. Nothing contained in this Act shall be deemed to apply, to pawnbrokers, that is to say, to persons who carry on the business of taking goods and chattels in pawn for a loan."

Amendment
of Madras
Act III of
1888.

24. (1) If the provisions of this Act have been applied to the City of Madras by a notification under sub-section (3) of section 1, section 29 of the Madras City Police Act, 1888, shall after the expiry of three months from the date of such application and so long as such notification is in force, have effect as if the word "pawnbroker" occurring in four places therein and the words "in pawn" were omitted.

Madras Act
III of 1888.

The Madras Pawnbrokers Act, 1943

[MADRAS ACT XXIII OF 1943]

(2) Nothing contained in this Act shall be deemed to exempt pawnbrokers from the operation of section 66 of the Madras City Police Act, 1888. Madras Act III of 1888.

Savings.

25. Nothing contained in this Act shall apply to any loan advanced on a pledge in any area to which the provisions of this Act have been applied by a notification under sub-section (3) of section 1 before the expiry of three months from the date of such application, and notwithstanding anything contained in section 23 of this Act, the provisions of the Madras Debtors Protection Act, 1934, as they stood before such application, shall continue to apply to any such loan. Madras Act VII of 1935.

MADHYA PRADESH

Usurious loans Act X of 1918

[AS AMENDED BY THE CENTRAL PROVINCES USURIOUS LOANS
(CENTRAL PROVINCES AMENDMENT) ACT, 1934 (XI OF 1934).]

**An Act to give Additional powers to Courts to deal in
certain cases with usurious loans of money or in kind.**

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind;

It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Usurious Loans Act, 1918. ^३

(2) It extends to the whole of British India, including British Baluchistan.

(3) The Provincial Government may, by notification in the official gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “Interest” means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(2) “Loan” means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) “Suit to which this Act applies” means any suit—

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act; or

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.

*3. (1) Notwithstanding anything in the Usury Laws XXVIII of Repeal Act, 1855 where, in any suit to which this Act 1855¹ applies, whether heard *ex parte* or otherwise, the Court has reason to believe—

(a) that the interest is excessive, or

*As amended by section 2 of the Usurious Loans (Central Provinces Amendment) Act, 1934 (XI of 1934), which came into force on the 15th June 1934.

The Usurious Loans Act, 1918 (As Amended by C. P. Act XI of 1934)

(b) that the transaction was, as between the parties thereto, substantially unfair,

the Court shall exercise all or any of the following powers namely—

- (i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest ;
- (ii) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof ;
- (iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that, in the exercise of these powers, the Court shall not—

- (i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction ;

Explanation.—In the case of a suit brought on a series of transactions the expression “the transaction” means for the purpose of proviso (i), the first of such transaction.

(2) (a) In this section “excessive” means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan :

- *[(i) Provided that compound interest in excess of ten per cent. on any loan made after such date, as the Provincial Government may, by notification, fix, shall be deemed to be excessive :
- (ii) Provided further that, where in any suit the Court finds that the rate of interest exceeds twelve per cent. per annum in the case of a secured loan or eighteen per cent. per annum in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, it shall, until the contrary is proved, presume that such rate is excessive, but this provision shall be without prejudice to the powers of the Court under sub-section (1) where the Court is satisfied that the interest charged, though not exceeding twelve

*The Usurious Loans Act, '918 (As Amended by C. P.
Act XI of 1934)*

per cent. per annum or eighteen per cent. per annum, as the case may be, is excessive.]

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged the periods at which it is calculated and the total advantage, which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.—Interest may of itself be sufficient evidence that the transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security.

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide*, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, the word "notice" shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882.

IV of 1882.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

insolvency
proceedings.

4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies.

THE CENTRAL PROVINCES AND BERAR MONEY-LENDERS ACT, 1934 (XIII OF 1934)

[THIS ACT HAS ALSO BEEN APPLIED TO BERAR AND CAME
INTO FORCE ON THE 1ST APRIL 1935.]

**An Act to regulate the transactions of money-lending in
the Central Provinces and Berar.**

Preamble. WHEREAS it is expedient to make better provision for
the regulation and control of the transactions of money-
lending ;

AND WHEREAS the previous sanction of the Governor-
General, required under sub-section (3) of section 80-A
of the Government of India Act, has been obtained to the
passing of this Act ;

It is hereby enacted as follows :—

**Short title,
extent and
Commence-
ment.**

1. (1) This Act may be called the Central Provinces and
Berar Money-lenders Act, 1934.

(2) It extends to the whole of the Central Provinces and
Berar.

(3) It shall come into force on such date as the Provincial
Government may, by notification, direct.

Definitions.

2. In this Act, unless there is anything repugnant in
the subject or context,—

(i) “bank” means a company carrying on the business
of banking and registered under any of the enactments
relating to companies for the time being in force in the
United Kingdom or in any of the Colonies or Dependencies
thereof, or in British India, or incorporated by an Act of
Parliament, or by Royal Charter or Letters Patent or by
any Act of the Indian Legislature ;

(ii) “company” means a company registered under
any of the enactments relating to companies for the time
being in force in the United Kingdom or any of the Colonies
or Dependencies thereof, or in British India, or incorporated
by an Act of Parliament, or by Royal Charter or Letters
Patent and includes Life Assurance Companies to which
the Indian Life Assurance Companies Act, 1912 applies ; **VI of 1912*.**

(iii) “co-operative society” means a society registered
under the Co-operative Societies Act, 1912 ; **II of 1912,**

(iv) “court” includes a court acting in the exercise of
insolvency jurisdiction ;

(v) “money-lender” means a person who, in the regular
course of business, advances a loan as defined in this Act
and shall include, subject to the provisions of section 3,

*See now the Insurance Act, 1938 (IV of 1938).

The C. P. & Berar Money-lenders Act, 1934

[C. P. Act XIII OF 193

the legal representatives and the successors in interest whether by inheritance, assignment or otherwise of the person who advanced the loans †[and moneylending shall be construed accordingly] ;

*[(vi) "interest" includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise whether or not such interest is capitalized within twelve years from the date of the last transaction ;]

††[(vii) "loan" ‡(means an actual advance made within twelve years from the date of the last transaction) whether of money or in kind at interest and shall include any transaction, which the court finds to be in substance a loan, but shall not include—

- (a) a deposit of money or other property in a Government post office bank or any other bank or in a company or with a co-operative society,
- (b) a loan to or by or a deposit with any society or association registered under the Societies' Registration Act, 1860 or under any other enactment, XXI of 18
- (c) a loan advanced by any Government or by any local authority authorized by any Government,
- (d) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies VII of 19
- (e) an advance made on the basis of a negotiable instrument, as defined in the Negotiable Instruments Act, 1881 other than a promissory note, XXVI
- (f) a transaction which is in substance a charge on, or a sale of immovable property,
- (g) a loan advanced to an agricultural labourer by his employer ;]

(viii) "prescribed" means prescribed by rules made under this Act ;

‡[(ix) "Sub-Registrar" means a Sub-Registrar appointed under the Indian Registration Act, 1908, or the same Act as applied to Berar.]

†These words were added by the Central Provinces & Berar Money-lenders (Amendment) Act, 1940 (XIV of 1940), section 2.

*Vide Central Provinces and Berar Money-lenders (Amendment) Act, 1939 (Central Provinces and Berar Act No. XVIII of 1939).

†† As amended by the Central Provinces and Berar Money-lenders (Amendment) Act, 1937 (XIX of 1937), Central Provinces and Berar Money-lenders (Amendment) Act, 1937 (XXIV of 1937) and the Central Provinces and Berar Money-lenders (Amendment) Act, 1939 (XXIII of 1939).

‡ These words were substituted by Act. No. XVIII of 1939, section 2.

§ Vide Central Provinces and Berar Money-lenders (Amendment) Act, 1940 (XIV of 1940).

Maintenance
of accounts
by money-
lenders and
supply of sta-
tements
thereof to
debtors.

3. (1) Every money-lender shall—

- (a) regularly maintain an account for each debtor separately of all transactions in respect of any loan advanced to that debtor ;
- (b) furnish such debtor every year with a legible statement of accounts signed by the money-lender or his agent of any balance or amount that may be outstanding against such debtor on such dates and in such areas as may be prescribed. Such statement of accounts shall include all transactions in respect of the loan entered into during the year to which the statement relates and shall be furnished, in the court language of the district in which the debtor resides, and in such manner, in such form, containing such details and on such date as may be prescribed.

(2) The account required under clause (a) of sub-section (1) shall be so maintained that items due by way of interest shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The money-lenders shall not, in the absence of agreement, include the interest or any portion of it in the principal sum, and the principal and interest shall be separately shown in the opening balance of each new annual account :

Provided that—

- (i) if the loan has, since it was originally advanced, passed by inheritance or assignment to a widow or a minor, such widow or minor shall not be bound to maintain and furnish the account under sub-section (1) for a period of two years from the date of such passing ;
- (ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the account under sub-section (1) in the case of a loan wherein the title to recover is *sub-judice* between two or more persons claiming as money-lenders adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.

Evidential
value of
copies of
accounts.

4. Copies of entries in the account required to be maintained under clause (a) of sub-section (1) of section 3, when certified in such manner as may be prescribed, shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

Debtors not
bound to ad-
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plied.

5. A debtor to whom a statement of accounts has been furnished under clause (b) of sub-section (1) of section 3 shall not be bound to acknowledge or deny its correctness and his failure to protest shall not by itself be deemed to be an admission of the correctness of the account.

Receipt of
repayment
of loan.

6. Every money-lender, who receives repayment from his debtor on account of any loan advanced to him, shall forthwith give a receipt therefor.

The C. P. & Berar Money-lenders Act, 1934.

[C. P. Act XI] [I of 1934]

Procedure
of court in
suits regard-
ing loans.

7. Notwithstanding anything contained in any other enactment for the time being in force, in any suit or proceeding relating to a loan—

- (a) the court shall, before deciding the claim on the merits, frame and decide the issue whether the money-lender has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3;
- (b) if the court finds that the provisions of clause (a) of sub-section (1) of section 3 or of section 6 have not been complied with by the moneylender, it shall, if the plaintiff's claim is established in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs; and
- (c) if the court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the money-lender, it shall, in computing the amount of interest due upon the loan, exclude every period for which the money-lender omitted duly to furnish the account as required by that clause:

Provided that if the moneylender has, after the time prescribed in that clause, furnished the account and the plaintiff satisfied the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omissions, include any such period or periods for the purpose of computing the interest.

Explanation.—A money-lender who has maintained his account and furnished his annual statements of accounts in the prescribed form and manner shall be held to have complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3 in spite of any errors and omissions, if the court finds that such errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of those clauses.

8. The provisions of sections 3, 4, 5, 6 and 7 shall not apply to any loan made before this Act comes into force:

Provided that, if any fresh transaction in respect of a loan made before this Act comes into force is made after this Act comes into force, such transaction shall be subject to the provisions of those sections.

Power of
court to
limit interest
recoverable
in certain
cases.

9. Notwithstanding anything contained in any other enactment for the time being in force, no court *[original or appellate] shall decree, in respect of any loan made before this Act comes into force, on account of arrears of interest, a sum greater than the principal of such loan.

Power of
court to lim-
it the ex-
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principal of
loan.

10. No court shall, in respect of any loan made after this Act comes into force, decree on account of arrears of interest a sum greater than the principal of the loan.

* These words were inserted by Central Provinces Act XXIV of 1937, section 3.

The C. P. & Berar Money-lenders Act, 1934

[C. P. Act. XIII of 1934]

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alments.

11. The Court may, at any time on the application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after this Act comes into force, in respect of a loan shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit. * [During the pendency of an inquiry under this section, the court may order the stay of execution of the decree subject to such conditions as it may impose. Such order shall be deemed to have been passed under section 47 of the Code of Civil Procedure, 1908.]

V of 1908

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†[**11-A.** (1) Every Sub-Registrar shall maintain a register of money-lenders in such form as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.

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11-B. (1) Every person who carries on or intends to carry on the business of money-lending shall get himself registered by an application made to the Sub-Registrar of any sub-district of the district or any one of the districts in which he carries on or intends to carry on such business and, on such registration, the Sub-Registrar shall grant a registration certificate to him in such form as may be prescribed.

(2) The application made under sub-section (1) shall be in writing and shall specify the district or districts in which the applicant carries on or intends to carry on the business of money-lending and such other particulars as may be prescribed.

11-C. The person who makes an application under section 11-B shall pay such registration fee, not exceeding eighteen rupees, as may be prescribed, in respect of each district in which he carries on or intends to carry on the business of money-lending, and such fee shall be payable by means of court-fee stamps affixed to the application:

Provided that the Provincial Government may, by notification, exempt any class of persons from the payment of the registration fee either generally or for any specified area.

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11-D. The registration certificate granted under section 11-B shall not entitle the holder thereof to carry on the business of money-lending in any district other than the district or districts for which such certificate has been granted.

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ificate.

11-E. A registration certificate granted under section 11-B shall be in force for four years from the date of registration.

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ificate.

11-F. (1) No person shall carry on the business of money-lending in any district unless he holds a valid registration certificate in respect of that district.

* This was inserted by Central Provinces Act XIX of 1937, section 3.

† Secs. 11-A to 11-J inserted by the C. P. & Berar Money-lenders (Amendment) Act, 1940 (XIV of 1940).

The C. P. & Berar Money-lenders Act, 1934

[C. P. ACT XII OF 1934]

Penalty (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to one hundred rupees, or, if he has previously been convicted of an offence under that sub-section, with fine which may extend to two hundred rupees.

Composition of offences. **11-G.** (1) The Deputy Commissioner may accept from any person who has committed an offence against sub-section (1) of section 11-F a sum of money not exceeding two hundred rupees by way of composition for such offence.

(2) On payment of such sum of money, no further proceedings shall be taken against such person in respect of such offence, and if in custody he shall be discharged.

Suit not to proceed without registration certificate etc. **11-H.** No suit for the recovery of a loan advanced by a moneylender shall proceed in a civil court until the court is satisfied that he holds a valid registration certificate or that he is not required to have a registration certificate by reason of the fact that he does not carry on the business of money-lending in any of the districts of the Central Provinces and Berar :

Provided that this section shall not apply to a suit instituted before the 1st October 1940.

Continuance in force of registration certificates. **11-I.** Notwithstanding the expiry of the Central Provinces and Berar Money-lenders (Amendment) Act, 1936 C. P. & Berar A XIII of 1936 any registration certificate granted thereunder by a Sub-Registrar of a sub-district shall be deemed to have been granted in respect of the district in which the sub-district is situated and shall continue to be in force for the period for which it was granted.

Interpretation of district. **11-J.** For the purposes of sub-section (2) of section 11-B and sections 11-C, 11-D, 11-F and 11-I, the term "district" shall have the meaning assigned to it in the Central Provinces and Berar Land Revenue Act, 1917 or the Berar Land Revenue Code 1928.] C. P. & Berar A II of 1917

Power to make rules. **12.** (1) All rules for which provision is made in this Act shall be made by the Provincial Government and shall be consistent with this Act.

(2) All rules shall be subject to the condition of previous publication.

(3) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules prescribing—

- (a) the manner and form with numerals in which statement of accounts shall be furnished and the details to be given in such statement under clause
- (b) of sub-section (1) of section 3;
- (b) the manner in which copies of entries in the account shall be certified under section 4;

*[(c) the form under section 11-A;

The C. P. & Berar Money-lenders (Supplementary) Act, 1939

[C. P. Act XVII of 1939]

(d) the form of registration certificate under sub-section (1) of section 11-B ;

(e) the particulars of an application under sub-section (2) of section 11-B ;

(f) the registration fee under section 11-C ; and

(g) the grant of copies of registration certificates.]

applicabil- †[13. This Act shall not apply to a proprietor who ad-
of the vances grain or money exclusively to any of his tenants
to prop- for seed, land improvement or agricultural operations.
or.

Explanation.—For the purpose of this section, the word “improvement” shall have the meaning assigned to it XIX of 1883. in the Land Improvement Loans Act, 1883.

**THE CENTRAL PROVINCES AND BERAR
MONEYLENDERS (SUPPLEMENTARY) ACT,
1939 (XVII OF 1939)**

amble. WHEREAS it is expedient to give retrospective effect to C. P. and
the amendment made by section 2 of the Central Provinces Berar Act of
and Berar Money-lenders (Second Amendment) Act, 1937 XXIV of
1937.

It is hereby enacted as follows :—

rt title. 1. This Act may be cited as the Central Provinces and
Berar Money-lenders (Supplementary) Act, 1939.

2. The amendment made to sub-clause (f) of clause (vii) C. P. &
of section 2 of the Central Provinces and Berar Money- Berar Act of
lenders Act, 1934 (hereinafter referred to as the said XIII
Act), by the Central Provinces and Berar Money 1934.
lenders (Second Amendment) Act, 1937 which is in C. P. &
force with effect from the 19th March 1937 shall Berar Act of
be deemed to be in force with effect from the 1st April XXIV of
1935. 1937.

3. The provisions of sections 3, 4, 5, 6 and 7 of the said C. P. &
Act shall not apply to a loan which is in substance a mort- Berar Act of
gage of immovable property and which was made between XIII
the period from the 1st April 1935 to the 19th March 1937. 1934.

† Ins. by C. P. and Berar Money-lenders (Amendment) Act, 1939 (XXXVII of 1939).

**THE CENTRAL PROVINCES AND BERAR
PROTECTION OF DEBTORS ACT, 1937
[IV OF 1937]**

[THIS ACT CAME INTO OPERATION IN THE CENTRAL PROVINCES ON THE 8TH MARCH 1937 AND IN BERAR ON THE 30TH MARCH 1937.]

An Act to provide for the protection of the debtors from molestation and intimidation by their creditors

Preamble.

WHEREAS it is expedient to make provision for the protection of debtors from molestation and intimidation by their creditors for the recovery of debts ;

AND WHEREAS the previous sanction of the Governor-General required by sub-section (3) of section 80-A of the Government of India Act has been obtained for the passing of this Act ;

It is hereby enacted as follows :—

**Short title,
extent and
commence-
ment.**

1. (1) This Act may be called the Central Provinces and Berar Protection of Debtors Act, 1937.

(2) It extends to the whole of the Central Provinces and Berar.

(3) It shall come into force on such date as the Provincial Government may, by notification, appoint in this behalf.

**Application
of sections 4
and 5.**

*2. The provisions of sections 4 and 5 shall apply only to such areas as the Provincial Government may, by notification, direct.

**Definition of
molestation.**

3. For the purposes of this Act, a person who, with intent to cause another person to abstain from doing or to do any act which he has a right to do or to abstain from doing,—

(a) obstructs, or uses violence to, or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or

(c) loiters or does any similar act at or near a house or other place where such other person resides, or works or carries on business, or happens to be,

shall be deemed to molest such other person :

Provided that a person who attends at or near such house or place in order merely to obtain or communicate information shall not be deemed to molest.

* The provisions of Sections 4 and 5 have been applied to all areas of the C. P. & Berar.

The C.P. & Berar Protection of Debtors Act, 1937

[C.P. Act IV of 1937]

4. Whoever molests, or abets the molestation of, any debtor for the recovery of a debt owed by him to his creditor shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Penalty for molestation

5. Notwithstanding any thing contained in the Code of Criminal Procedure, 1898, an offence punishable under section 4 shall be cognizable and bailable, and no court shall take cognizance of any such offence except upon a report in writing of facts which constitute the offence made by a police officer not below the rank of sub-inspector. Such an offence shall be compoundable with the leave of the Court. Offence of molestation to be cognizable and non-bailable offence

THE ORISSA MONEY-LENDERS ACT, 1939

Orissa Act III of 1939

AS AMENDED BY THE ORISSA ACT 18 OF 1947
AND THE ORISSA ACT 27 OF 1947.

An Act to regulate money-lending transactions and to grant relief to debtors in the Province of Orissa

WHEREAS it is expedient to regulate money-lending transactions and to grant relief to debtors in the province of Orissa ;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Orissa Money-Lenders Act, 1939.

(2) It extends to the whole of the Province of Orissa.

(3) All or any of the Provisions of this Act shall come into force throughout the whole or any part of the Province on such date or dates as the Governor may, by notification, appoint, and different dates may be so appointed for different provisions and different areas.

2. In this Act, unless there is anything repugnant in the subject or context.—

(a) “ bank ” means a company carrying on the business of banking and—

(i) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or

(ii) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature ;

(b) “ business of money-lending ” means the business of advancing loans ;

(c) “ capital ” means that which a money-lender invests in the business of money-lending whether in money or in kind ;

The Orissa Money-Lenders Act, 1939

[ORISSA ACT III of

(d) "company" means a company—

(i) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or

(ii) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by an Act of the Indian Legislature,

IV of 1938. and includes a life insurance company to which the insurance Act, 1938, will apply ;

Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26 and 27 of this Act shall apply to all the partially excluded areas in the province of Orissa with effect from 15th April 1940 subject to certain modifications.*

**B. & O. Act
VI of 1935.
Madras Act
VI of 1932.**

(e) "co-operative society" means a society registered or deemed to have been registered under the Bihar and Orissa Co-operative Societies Act, 1935, the Madras Co-operative Societies Act, 1932, or any Act of any other Provincial Legislature relating to such societies ;

(f) "Court" includes a Court acting in the exercise of insolvency jurisdiction and also a Court or other authority to which a decree is sent for execution ;

**V of 1908 IX
of 1899.**

(g) "decree" means a decree as defined by the Code of Civil Procedure, 1908 and includes an award enforceable as a decree of a Court under the Indian Arbitration Act, 1899 and also preliminary decrees and final decrees in the case of secured loans ;

(h) "interest" means rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise ;

(i) "loan" means an advance whether of money or in kind on interest made by a money-lender and shall include a transaction on a document bearing interest, executed in respect of past liability and any transaction which, in substance, is a loan, but shall not include—

(1) a loan advanced by the Provincial Government or by any local body authorised by the Provincial Government or by a co-operative society ;

(2) a deposit of money in a Post Office Savings Bank or a deposit of money or other property in any other bank or in a company or with a co-operative society ;

(3) the amount, or the proportionate amount, as the case may be, payable under a mortgage by the purchaser at a sale in execution of a decree of a Court or otherwise, of the whole or part of the properties subject to a mortgage, the purchase having been made prior to the coming into force of this Act ;

(4) any loan or loans due to a widow on the 1st February, 1930, who on that date did not own any other property

*See Orissa Government Notification No. 1120/IVA-11/40, dated the 6th April 1940.

provided that the principal amount of the loan or loans does not exceed rupees two thousand.

Explanations. (1) A bond bearing interest executed in respect of goods taken on credit constitutes a loan.

(2) A supply of goods—

(i) on *khata* carrying interest up to six and a quarter per centum simple per annum or

(ii) on credit,

is not a loan.

(3) For the purposes of this clause a “ purchaser ” includes his legal representatives and successors in interest, whether by inheritance, assignment or otherwise.

(4) For the purposes of this clause, the house in which the creditor widow lived or any furniture therein or her household utensils, wearing apparel, jewellery or such like personal belongings shall not be regarded as property.

(j) “ money-lender ” means—

*[(1) In sections 4, 5, 6, 7, 8, 18 and 19, a person who advances a loan in the regular course of business of money lending ; and

(2) in the remaining sections, a person who advances a loan ;

and in both cases of (1) and (2) shall include a Hindu undivided family and the legal representatives and successors in interest whether by inheritance, assignment or otherwise of such a person who advances a loan.]

(k) “ prescribed ” means prescribed by rules made under this Act ;

(l) “ principal ” means in relation to a loan the amount actually lent to the debtor ;

(m) “ registered money-lender ” means a person to whom a registration certificate has been granted under section 5, and shall include a Hindu undivided family and the legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise, of a registered money-lender ;

(n) “ rules ” means rules made under this Act ;

(o) “ secured loan ” means a loan for which the money lender holds a mortgage, charge, lien, or pledge on the property of the debtor or any part thereof as a security for that loan ;

(p) “ Sub-Registrar ” means a Sub-Registrar appointed VI of 1908. under the Indian Registration Act, 1908 ;

(q) “ suit ” includes an appeal ; and

(r) “ unsecured loan ” means any loan other than a secured loan.

Power of Provincial Government to exempt any money lender or class of money lenders or any class of loans from all or any of the provisions of this Act.

3. The Provincial Government may, by notification for any special reason or reasons to be stated in such notification exempt any money-lender or class of money-lenders or any class of loans in the whole or any part of the Province of Orissa from the operation of all or any of the provisions of this Act.]

CHAPTER II

REGISTRATION OF MONEY-LENDERS AND ACCOUNTS TO BE KEPT BY MONEY-LENDERS.

Register of money-lenders

4. (1) Every Sub-Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.

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Registration of money Lenders and Registration fee.

5. (1) Any person may make an application to be registered as a money-lender. Every such application shall be in writing and shall state—

- (a) the name and address of the applicant ;
- (b) the name and style under which he carried on or desires to carry on business as a money-lender.
- (c) the principal place of his business and the branches thereof, if any ;
- (d) whether any certificate of registration previously granted to him under this Act has been cancelled ; and
- (e) such other particulars as may be prescribed.

(2) (a) Every application made under sub-section (1) shall be accompanied by the prescribed registration fee and shall be presented to the Sub-Registrar within whose jurisdiction the principal place of business referred to in clause (c) of sub-section (1) is situate.

(b) Any such application, which is not accompanied by the prescribed registration fee or does not contain the particulars specified in sub-section (1), shall be summarily rejected.

(3) The Provincial Government may by rules prescribe for different classes of money-lenders and for different areas a registration fee not exceeding twenty-five rupees to be paid by an applicant for registration :

Provided that the Provincial Government may, by notification, exempt any person or class of persons from the payment of the registration fee either generally or in any specified area.

(4) On receipt of an application under clause (a) of sub-section (2) the Sub-Registrar shall, except where a certificate previously granted to the applicant has been cancelled under

The Orissa Money-Lenders Act, 1939

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section 18 and the order of cancellation is in force, grant a registration certificate in the prescribed form to the applicant.

6. A registration certificate granted under section 5 shall, unless sooner cancelled under section 18, be in force for [five]* years from the date on which it is granted.

7. Every registered money-lender shall in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act—

- (a) regularly record and maintain, or cause to be recorded and maintained, an account showing for each debtor—
 - (i) the date of the loan, the amount of the principal of the loan and the rate per centum per annum of interest charged on the loan ;
 - (ii) the amount of every payment received by the money-lender in respect of the loan, and the date of such payment ; and
 - (iii) any other terms which may be agreed on between the money-lender and the debtor ;
- (b) give to the debtor, or his agent, a receipt for every sum paid by, or on behalf of, the debtor, duly signed and, if necessary, stamped at the time of such payment ; or, within a reasonable time after it. The money-lender shall also, on demand, permit the debtor or his agent to endorse such payment on the document, if any, evidencing the loan ; and
- (c) give to the debtor a signed receipt for every pawned article with its general description, immediately after it is pawned, mentioning the amount for which it is pawned, the rate of interest charged per centum per annum and other particulars as may be prescribed.

CHAPTER III

PROVISIONS RELATING TO SUITS IN RESPECT OF LOANS AND
EXECUTION OF DECREES

8. A money-lender shall not be entitled to institute a suit for the recovery of a loan advanced by him after the date on which this section comes into force unless he was registered under this Act at the time when such loan was advanced :

Provided that a money-lender shall be entitled to institute a suit to recover a loan advanced by him at any time in the course of a year after the date on which this section comes into force, if he is granted a certificate of registration under section 5 at any time before the expiration of the said year.

* Subs. by Sec. 2 of Orissa Act 27 of 1947.

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[ORISSA ACT III OF

Maximum rates at which interest may be decreed.

9 Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, ¹[whether brought by money-lender or by any other person] in respect of a loan advanced after the commencement of this Act, pass a decree for interest at rates exceeding 9 per centum simple per annum in the case of a secured loan and 12 per centum simple per annum in the case of an unsecured loan.

Maximum amount of interest which may be decreed and appropriation of excess interest towards loan.

10. (1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit whether brought by a money-lender ²[or by any other person] in respect of a loan advanced before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realised as interest through Court or otherwise is greater than the amount of the loan originally advanced.

(2) Where, in any suit, as is referred to in sub-section (1), it is found that the amount already realised as interest through Court or otherwise, for the period preceding the institution of the suit, is greater than the amount of the loan originally advanced, so much of the said amount of interest as is in excess of the loan shall be appropriated towards the satisfaction of the loan and the Court shall pass a decree for the payment of the balance of the loan, if any.

³[3. Where a decree passed by a Court on the 1st April 1936 or thereafter on the basis of a loan remains unsatisfied in whole or in part on the date on which the Orissa Money lenders (Amendment) Act, 1947, comes into force, the court which passed the decree or the Court or other authority to which the decree is sent for execution shall, on the application of the judgement-debtor, exercise the powers specified in sub section (2) and the decree shall be modified accordingly.]

Powers to reopen certain transactions and appropriate excess interest towards loan.

11. (1) In any suit whether brought by a money-lender⁴ [or by any other person] in respect of a loan advanced before the commencement of this Act, the Court shall exercise all or any of the following powers as may be applicable to it, namely :—

- (i) reopen the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any interest, in excess of nine per centum simple per annum in the case of a secured loan and twelve per centum simple per annum in the case of an unsecured loan ;
- (ii) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of

1. Subs. by Sec. 3 of Orissa Act 18 of 1947.

2. Subs. by Sec. 4 of Orissa Act 18 of 1947.

3. Subs. by Sec. 4 of Orissa Act 18 of 1947.

4. Subs. by Sec. 5 of Orissa Act 18 of 1947.

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any interest, in excess of nine per centum simple per annum in the case of a secured loan and twelve per centum simple per annum in the case of an unsecured loan ;

(iii) appropriate excess interest, referred to in clauses (i) and (ii), realised through Court or otherwise, towards the satisfaction of the loan ;

(iv) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and, if the money-lender has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

* * * *

Provided that nothing contained in this sub-section shall be deemed to require the creditor to refund any sum which has been paid to him.

(2) Where a decree passed by a Court on 1st April 1936 or thereafter, on the basis of a loan, remains unsatisfied in whole or in part on the date on which this Act comes into force, the Court which passed the decree, or the Court or other authority to which a decree is sent for execution (shall)¹ on the application of the judgement-debtor, exercise all or any of the powers specified in sub-section (1).

12. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may at the time of passing the decree in any suit relating to a mortgage by which any loan is secured, order that payment of any amount decreed in such suit shall, subject to such conditions as the Court may impose, be made by instalments :

Provided that before fixing the instalments the Court shall take into consideration the repaying capacity of the judgement debtor and shall satisfy itself that the judgement-debtor is in a position to pay the instalments on the due dates :

Provided further that simple interest at 6 per centum per annum may be allowed on the decretal amount till the date of payment or sale.

13. ² [(1)] Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may [for reasons to be recorded in writing]² at any time, on the application of a judgement-debtor, after notice to the decree-holder, direct that the amount of any decree passed before or after the commencement of this Act, in respect of a loan, including any decree in a suit relating to a mortgage by which a loan is secured, shall be paid in such number of instalments and subject to such conditions on the dates

¹ *Subs. by Sec. 5 of Orissa Act 18 of 1947.*

² *Renumbered, ins. and added by Sec. 6 of Orissa Act 18 of 1947.*

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fixed by it as having regard to the circumstances of the judgement-debtor and the amount of the decree, it considers fit.

¹ [(2) Any person aggrieved by an order passed under Sub-section (1) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie.]

Court to estimate the value of judgement-debtor's property.

14. When an application is made for the execution of a decree passed in respect of a loan or the interest on a loan by the sale of the judgement-debtor's property, the Court executing the decree shall, notwithstanding anything to the contrary contained in any other law or in anything having the force of law, hear the parties to the decree and estimate as prescribed the value of such property and of that portion of such property the proceeds of the sale of which it considers will be sufficient to satisfy the decree :

Provided that the Court may order the whole property of the judgement-debtor to be sold if it is satisfied that by reason of the nature of such property or any other special circumstances such property cannot reasonably or conveniently be sold in part.

² [(2) Any person aggrieved by an order passed under Sub-section (i) may appeal to the court to which appeals from the Court executing the decree ordinarily lie.]

Only sufficient portion of judgement-debtor's property to be sold.

15. ³ (1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan or the interest on a loan shall include only so much of the property of the judgement-debtor, the proceeds of the sale of which the Court considers will be sufficient to satisfy the decree, and such property shall not be sold at a price lower than the price specified in the said proclamation :

Provided that if the property to be sold is immovable property and the decree-holder specifies which portion of such property should be sold, the Court shall order that such portion or so much of such portion as may seem necessary to satisfy the decree shall be sold :

Provided further that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation, the Court may sell the property for such highest amount, if the decree holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation.

⁴ [(2) Any person aggrieved by an order passed under Sub-Section (i) may appeal to the Court to which appeal from the Court executing the decree ordinarily lie.].

¹. Renumbered inserted by Sec. 7 of Orissa Act 18 of 1947.

². Added by Sec. 7 of Orissa Act 18 of 1947.

³. Renumbered by Sec. 8 of Orissa Act 18 of 1947.

⁴. Inserted by Sec. 8 of Orissa Act 18 of 1947.

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16. The provisions of sections 10 to 15 shall [so far as may apply] ¹ apply :—

(i) to suits whether brought by money-lenders [or any other persons]¹ in respect of loans advanced before the commencement of this Act, and pending on the date on which the said sections come into force ; and

(ii) to appeals and proceedings in execution arising in respect of decrees passed on 1st April, 1936 or thereafter on the basis of loans whether such appeals or proceedings in execution were pending on, or instituted after, the date on which the said sections come into force.

discharge of usufructuary mortgages. 17. Notwithstanding anything to the contrary contained in any other law or anything having the force of law or in any contract, a usufructuary mortgage, which is executed [either before or]² after the commencement of the Act, shall, unless discharged previously, be deemed to stand discharged after the expiration of fifteen years from the date of the mortgage and the mortgagee shall deliver up to the mortgagor all documents in his possession or power relating to the mortgaged property and shall, if so required, retransfer the property to the mortgagor at his cost free from the mortgage and from all encumbrance secreted by him or those claiming under him and shall also put the mortgagor in possession of the property.

CHAPTER IV

PENALTIES AND PROCEDURE

18. (1) Where in any suit brought in respect of a loan by a registered money-lender, or in respect of any security taken for a loan by a registered money-lender the Court is of opinion that the registered money-lender has been guilty of fraud, the Court shall make an order recording a finding to that effect and fixing a period not exceeding three years as it thinks fit during which the registration certificate granted to the money-lender shall remain cancelled.

(2) Where an order under sub-section (1) is made by a Court exercising original jurisdiction, an appeal shall lie from it, within such period as may be prescribed, to the Court to which appeals from the decrees passed by such Court ordinarily lie, and the decision of the appellate Court shall be final; but no appeal shall lie from an order made under sub-section (1) by an appellate Court in an appeal from a decree of a Court exercising original jurisdiction.

(3) A copy of every order made under sub-section (1) or sub-section (2) shall be sent to the Collector by the Court concerned and the Collector shall, after the order has become final, cancel the registration certificate granted to the money-lender for the period mentioned in the order.

¹, *Ins. and subs. by Sec. 9 of Orissa Act 18 of 1917.*

². *Ins. by Sec. 10 of Orissa Act 18 of 1947.*

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(4) When the certificate of a registered money-lender has been cancelled under sub-section (1) such money-lender shall not be entitled to make any application under section 5 during the period in which such order of cancellation remains in force; but such cancellation shall not preclude the money-lender from instituting suits in respect of loans advanced by him before the date of the order of such cancellation.

Penalty for contravention of the provisions of section 7. 19. If any money-lender or his agent wilfully contravenes any of the provisions of section 7, such money-lender or agent, as the case may be, shall be punishable with fine not exceeding five hundred rupees.

Penalty for taking premium 20. If after the commencement of this Act, any money-lender or his agent takes from a debtor at the time of advancing a loan or deducts out of the principal of such loan any premium or other exactions of a similar nature by whatever name called or known, such money-lender or his agent, as the case may be, shall be punishable with fine, not exceeding twice the amount of such premium or exaction.

CHAPTER V

MISCELLANEOUS

Powers of Court under the Usurious Loans Act 1918 not affected by this Act. 21. Save as otherwise provided in section 11 nothing in this Act shall affect the powers of a Court under the Usurious Loans Act, 1918.

X of 1918

Contract for payment outside the Province void. 22. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, any contract entered into between a money-lender and his debtor in respect of a loan advanced after the commencement of the Act providing for the payment of the amount due on such loan at any place outside the Province of Orissa shall to that extent, be void, but this section shall not apply to contracts in respect of goods supplied on *Khata* or on credit.

Power to deposit in Court money due on loan. 23. (1) When a debtor tenders to a money-lender or his agent money on account of any interest due on a loan or on account of a principal of a loan and the money-lender or his agent refuses to receive the amount tendered or refuses to grant a receipt for the same, the debtor may deposit, in any Court in which the money-lender might have instituted suit for the recovery of such interest or such loan, to the account of the money-lender the amount tendered as aforesaid.

(2) The Court shall thereupon forthwith grant a receipt for the deposit under the seal of the Court and cause a written notice of the deposit to be served upon the money-lender.

(3) The money-lender may at any time within three years after the date of the service upon him of the notice mentioned in sub-section (2) make an application to the Court praying for the amount deposited as aforesaid to be paid to him.

(4) If no application is made under sub-section (3) within the period mentioned in the said sub-section, the amount deposited shall be disposed of in the prescribed manner.

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(5) Upon receipt of an application under sub-section (3) the Court may order such amount to be paid to the applicant upon such terms and subject to such conditions as may be specified in the order.

Court's receipt to operate as acquittance.

24. A receipt given by the Court under sub-section (2) of section 23 shall operate as an acquittance for the amount deposited as aforesaid in the same manner and to the same extent as if that amount had been received by the money-lender to whose credit the deposit was made, on the date of such deposit.

Restriction on repayment void.

25. A debtor may repay the whole or any part of the principal or interest due under a loan to the money-lender at any time and in any manner and any agreement between a money-lender and a debtor to the contrary imposing restrictions on the freedom of repayment shall be illegal and void.

Explanation.—An agreement entered into by a debtor prohibiting either absolutely or conditionally, repayment of the principal or interest due under a loan until after the expiry of a certain period of time shall be void.

Power to make rules.

26. (1) The Provincial Government may make rules for the purpose of carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Provincial Government may make rules :—

- (a) prescribing the form of the register mentioned in sub-section (1) of section 4 and the particulars to be contained in such a register ;
- (b) prescribing the form of the registration certificate mentioned in sub-section (4) of section 5 ;
- (c) prescribing the particulars to be contained in an application made under sub-section (1) of section 5 ;
- (d) prescribing the registration fee to be paid on the applications made under sub-section (1) of section 5 ;
- (e) providing for and regulating the supply of copies of the account mentioned in clause (a) of section 7 ;
- (f) providing for and regulating the grant of periodical statements of account to a debtor signed by the money-lender or his agent showing the balance or amount that might be outstanding against such debtor on account of the principal and interest at the time of furnishing the said statement and the amount of every payment received by the money-lender in respect of the loan and the date of such payment during the period to which the statement relates ;
- (g) prescribing the particulars to be contained in a plaint in a suit by a money-lender as defined in sub-clause (1) or sub-clause (2) of clause (j) of section 2 ;

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- (h) for estimating the value of the property under section 14 ;
- (i) prescribing the period for appeal under sub-section (2) of section 18 ; and
- (j) prescribing the manner in which deposits made under sub-section (4) of section 23 shall be disposed of.

(3) Draft of the rules proposed to be made under this section shall be laid on the table of the Orissa Legislative Assembly and the rules shall not be made unless the Assembly by resolution, approves the draft either without modification or addition or with modifications or additions ; but, upon such approval being given, the rules may be made in the form in which they have been approved and such rules shall have force and effect after previous publication in the official gazette.

**Repeal of
enactments.**

27. The Madras Debtor's Protection Act, 1934, the Usurious Loans (Central Provinces Amendment) Act, 1934, and the Central Provinces Money-lenders Act, 1934, and section 3 of the Agency Tracts Interest and Land Transfer Act, 1917, in their application to the Province of Orissa, are hereby repealed.

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THE PUNJAB REGULATION OF ACCOUNTS ACT 1930¹

Punjab Act I of 1930

1	2	3	4
Year.	No.	Short title	Whether repealed or otherwise affected by legislation
1930	I	The Punjab Regulation of Accounts Act, 1930.	Amended in part. Government of India (Adaptation of Indian Laws) Order, 1937.

amble:

An Act to regulate the keeping of accounts of certain transactions.

WHEREAS it is expedient to make provision for regulating the keeping of accounts relating to certain transactions in the Punjab, and whereas the previous sanction of the Governor-General under section 80-A (3) of the Government of India Act has been obtained; It is hereby enacted as follows:—

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1. (1) This act may be called the Punjab Regulation of Accounts Act, 1930.

(2) It extends to the Punjab.

(3) It shall come into force on such date as ²[Provincial Government] may, by notification, appoint in this behalf:

Provided that this date shall not be earlier than six months or later than one year after the date of final publication of the rules made under section 6.

¹For Statement of Objects and Reasons, see *Punjab Gazette*, 1929, Part V, pages 43—44 and for Report of the Select Committee, see *Punjab Gazette*, 1929, Part V, pages 51—64. For proceedings in Council, see the Punjab Legislative Council Debates, Volume XII, pages 42 and 149, Volume XIII, pages 27—31, 334—349, Volume XIV, pages 259, 288, 774, 812—33, 785—95, 833—49, 851—84, 887—928, 930—63, 965—1002, 1002—1014.

It came into force on 1st July, 1931,—vide Punjab Government notification No. 1871 -Judl., dated the 17th June, 1931, published in *Punjab Gazette*, 1931, Part I, page 657.

²Substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context :—

- (1) "Bank" means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the ¹[Central Legislature].
- (2) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.
- (3) "Co-operative Society" means a society, registered under the provisions of Co-operative Societies Act, 1912.
- (4) "Court" includes a court acting in the exercise of insolvency jurisdiction.
- (5) "Creditor" means a person who in the regular course of business advances a loan as defined in this Act and shall include subject to the provisions of section 3 the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan.
- (6) "Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.
- (7) "Loan" means an advance whether of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include :—
 - (i) a deposit of money or other property in a Government Post Office Bank or any other bank or in a company or with a co-operative society ;
 - (ii) a loan to or by or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment ;
 - (iii) a loan advanced by ²[the Central or any Provincial Government] or by any local body authorised by ²[the Central or any Provincial Government] ;

¹Substituted for the words "Indian Legislature" by the Government of India (Adaptation of Indian Laws) Order, 1937.

²Substituted for the word "Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

- (iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies' Act ;
 - (v) a loan advanced to a trader ;
 - (vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ;
 - (vii) a transaction which is, in substance, a mortgage or a sale of immoveable property.
- (8) " Prescribed " means prescribed by rules made under this Act.
- (9) " Trader " means a person who in the regular course of business buys and sells goods or other property, whether moveable or immoveable, and shall include :—
- a wholesale or a retail merchant,
 - a commission agent,
 - a broker,
 - a manufacturer,
 - a contractor,
 - a factory owner,

but shall not include a person who sells his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

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3. (1) A creditor shall in order to comply with the provisions of this Act :—

- (a) regularly record and maintain an account for each debtor separately, of all transactions relating to any loan advanced to that debtor, in such manner as the ¹[Provincial Government] may prescribe.
- (b) furnish each debtor every six months with a legible statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on the 30th day of June or 15th Har and the 31st day of December or 15th Poh in each year. This statement of account shall include all transactions relating to the loan entered into during the six months to which the statement relates, and shall be sent, in such manner and in such form and containing such details as the ¹[Provincial Government] may prescribe, on or before the 31st day of August or 15th Bha-don in the case of any balance outstanding on the 30th day of June or 15th Har and on or before the 28th day of February or 15th Phagan in the case of any balance outstanding on the 31st day of December or 15th Poh.

¹Substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

The Punjab Regulation of Accounts Act, 1930

[PUNJAB ACT I OF 1930]

Explanation.—(i) The ¹[Provincial Government] shall prescribe the forms and numerals in which the accounts required by this provision of this sub-section are to be maintained and furnished, and the creditor shall at his option use one of the following scripts and languages, namely—English, Urdu, Gurmukhi, Nagri or Mahajani: Provided that if the debtor in writing demands that the account be furnished in any one of the above scripts it shall be supplied to him in that script at his cost according to the scale prescribed;

(ii) the prescribed accounts shall be so kept that items due by a way of interest shall be shown as separate and distinct from the principal sum, and separate totals of principal and interest shall be maintained. The creditor shall not in the absence of agreement, include the interest or any portion of it in the principal sum; and the principal and interest shall be separately shown in the opening balance of each new six-monthly account:

Provided that---

(i) if the loan has, since it was originally advanced, passed by inheritance or assignment to a widow or minor, such widow or minor shall not be bound to maintain and furnish the account prescribed by this section for a period of six months from the date of such passing;

(ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the prescribed account in the case of a loan wherein the title to recover is *subjudice* between two or more persons claiming as creditors adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.

(2) Entries in the account prescribed under clause (a) to sub-section (1) shall be deemed to be regularly kept in the course of business for the purposes of section 34, Indian Evidence Act, 1872, and copies of such entries certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

Explanation.—A person to whom a statement of account has been sent under clause (b) of sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall not, by itself, be deemed to be an admission of correctness of the account.

Penalty for non-compliance with the provisions of section 3.

4. Notwithstanding anything contained in any other enactment in force for the time being:—

(a) in any suit or proceeding relating to a loan the court shall, before deciding the claim on the merits, frame and decide the issue, whether the creditor has complied with the provisions of clauses (a) and (b) of subsection (1) of section 3;

¹Substituted for the words 'Local Government' by the Government of India (Adaptation of Indian Laws) Order, 1937.

- (b) if the court finds that the provisions of clause (a) of sub-section (1) of section 3 have not been complied with by the creditor, the court shall, if the plaintiff's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as may seem reasonable to the court in the circumstances of the case and shall disallow costs ;
- (c) if the court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the creditor, the court shall in computing the amount of interest due upon the loan exclude every period for which the creditor omitted duly to furnish the account as required by clause (b) of sub-section (1) of section 3 : Provided that if the creditor has after the time prescribed in that clause furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

Explanation.—A person who has kept his account and sent his six-monthly statements of accounts in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 3 shall be held to have complied with the provisions of these clauses, in spite of errors and omissions, if the court finds that the errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

5. The provisions of this Act shall not apply to any loan advanced before the commencement of this Act :

Provided that if any fresh transaction relating to a loan advanced before the commencement of this Act is made after the commencement of this Act, such transaction shall be subject to the provisions of this Act.

6. (1) The ¹[Provincial Government] may make rules not inconsistent with the Act for the purposes of carrying out all or any of the provisions of this Act.

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(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[Provincial Government] may make rules²,—

(i) prescribing the forms and numerals to be used in the accounts required by sub-section (1) of section 3 ;

(ii) prescribing the manner in which the accounts required by clause (b) of sub-section (1) of section 3 shall be furnished by the creditor to the debtor

¹Substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

²For rules see *Government Gazette, Punjab*, 1930, Part I, p. 1164, Notification No. 37270/11, dated the 12th December, 1930.

the forms to be used, and the details to be incorporated therein and the scale of costs to be paid by such debtors as may demand that the account required by this clause should be furnished in one of the particular scripts mentioned in Explanation (i) of this clause :

Provided that before making any rules under the provisions of this section, the ¹[Provincial Government] shall, in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act, 1898, publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby, at least thirty days before a meeting of the Punjab Legislative ²[Assembly]. The ¹[Provincial Government] shall defer consideration of such rules until after the meeting of the Punjab Legislative ²[Assembly] next following the publication of the draft, in order to give any member of the ²[Assembly] an opportunity to introduce a motion for discussing the draft.

¹Substituted for the words " Local Government " by the Government of India (Adaptation of Indian Laws) Order, 1937.

²Substituted for the word " Council " by the Government of India (Adaptation of Indian Laws) Order, 1937

THE PUNJAB DEBTORS' PROTECTION ACT,¹ 1936.

[ACT II OF 1936]

1	2	3	4
Year	No.	Short title.	Whether repealed or otherwise affected by legislation.
1936	II	The Punjab Debtors' Protection Act, 1936.	Amended in part. (Government of India (Adaptation of Indian Laws) Order, 1937. Amended. Punjab Act IX of 1938. Amended. Punjab Act X of 1939. Amended. East Punjab Act III of 1948.

An Act to provide for the more effective protection of debtors in the Punjab.

Enacted.

WHEREAS it is expedient for the more effective protection of debtors to modify the existing law on certain points and to amend the law in respect to persons carrying on business as money-lenders ;

AND WHEREAS the previous sanction of the Governor-General under sub-section (3) of section 80-A of the Government of India Act and the previous sanction of the Governor under section 80-C of the said Act have been obtained ;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

Short title,
and
extent.

1. (1) This Act may be called the Punjab Debtors' Protection Act, 1936.

(2) It extends to the Punjab.

¹For Statement of Objects and Reasons, see the *Punjab Gazette*, 1935, Part I, page 249. For Report of the Select Committee, see *Punjab Gazette*, 1935, Part V, pages 49-50 and for Proceedings in Council, see the Punjab Legislative Council Debates, Volume XXVI, pages 988-989, Volume XXVII, pages 1137—1174, 1177—1210, 1238—1247, Volume XXVIII, pages 903, 1003—1028.

(3) It shall come into force *at once*.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "Bank" means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom, or in any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the ¹[Central Legislature].
- (2) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament or by Royal Charter or Letters Patent, and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912 applies. VI of 1
- (3) "Co-operative Society" means a society registered under the provisions of Co-operative Societies II of 1 Act, 1912.
- (4) "Court" includes a court acting in the exercise of insolvency jurisdiction.
- (5) "Interest" includes the return to be made, over and above what was actually lent, whether the same is charged or sought to be recovered, specifically by way of interest or otherwise.
- (6) "Loan" means an advance whether of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include :—
 - (i) a deposit of money or other property in a Post Office Savings Bank or any other bank, or in a company or with a co-operative society ;
 - (ii) a loan to or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment for the time being in force ; XXI
1860.
 - (iii) a loan advanced by the ¹[Provincial Government] or by any local body authorized by the ¹[Provincial Government] ;
 - (iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Indian Companies Act, 1913 ; VII of 11
 - (v) a loan advanced to a trader ;

¹Substituted for the words "Indian Legislature" by the Government of India (Adaptation of Indian Laws) Order, 1937.

The Punjab Debtors' Protection Act, 1936

[PUNJAB ACT II OF 1936]

- (vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note; ^{XXVI of 1881.}
- (vii) a transaction which is, in substance, a mortgage or a sale of immovable property.
- (7) "Money-lender" means a person who, in the regular course of business, advances a loan as defined in this Act and shall include the legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise, or the person who advanced the loan.
- (8) "Trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include—
- (i) a wholesale or a retail merchant,
 - (ii) a commission agent,
 - (iii) a broker,
 - a manufacturer,
 - (v) a contractor,
 - (vi) a factory owner,

but shall not include a person who sells his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

CHAPTER II

EXECUTION OF DECREES.

3. In this Chapter, unless there is anything repugnant in the subject or context,—

- (1) "land" means land which is not occupied as the site of any building in a town or village, and is occupied or has been let for agricultural purposes, or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land ;
- (2) "Collector" means the Deputy Commissioner of a district or any officer specially empowered by the ¹[Provincial Government] to exercise the powers of a Collector under this Chapter.
- ²[(3) "Commissioner" means the Commissioner of a Division or any officer specially empowered by the Provincial Government to exercise the powers of a Commissioner under this Chapter.]

¹Substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

²This sub-section was added by section 3 of the Punjab Debtors' Protection (Amendment) Act, 1939 (X of 1939).

The Punjab Debtors' Protection Act, 1936

[PUNJAB ACT II OF]

Temporary alienation of land in execution of decree for the payment of money. 4. (1) Notwithstanding anything contained in any other enactment for the time being in force, whenever a civil court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money the proceedings of such attachment and alienation shall be transferred to the Collector.

(2) On the proceedings being transferred to him by the civil court the Collector shall decide the period of alienation, which shall not exceed twenty years in the case of land owned by a member of a statutory agricultural tribe, determined to be such by the ^{XIII} [Provincial Government] in 1900. exercise of the powers conferred by section 4 of the Punjab Alienation of Land Act, 1900.

Partial exemption of land. 5. Such portion of the judgment-debtor's land shall be exempted from temporary alienation as in the opinion of the Collector, having regard to the judgment-debtor's income from all sources except such income as is dependent on the will of another person, is sufficient to provide for the maintenance of the judgment-debtor and the members of his family who are dependent on him.

Collector and Commissioner deemed to be acting judicially. 6. The Collector when acting under sections 4 and 5 shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to the Court from which the proceedings were transferred to him and any party aggrieved by an order of the Collector under sections 4 or 5 shall have a right of appeal to the Commissioner who when hearing appeals under this section shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to a Civil Court of Appeal.

Revision. ¹[6-A. The Financial Commissioner may, at any time, call for and examine the record of any order passed, or proceedings taken by the Collector or the Commissioner under this Act for the purpose of satisfying himself as to the legality or propriety of such order or such proceedings and may pass such order thereon as he may think fit.]

Limitation for appeals. 7. The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against and shall be sixty days.

Rules to be made after previous publication. 8. The ²[Provincial Government] may, subject to the condition of previous publication, make rules for carrying into effect the provisions of sections 4, 5, 6 and 7 of this Chapter.

Exemption of ancestral property from liability. 9. When custom is the rule of decision in regard to succession to immovable property then, notwithstanding any custom to the contrary, ancestral immoveable property in the hands of a subsequent holder ³[whether male or female and if female whether he holds as a limited owner or full

¹Section 6-A was added by section 4 of the Punjab Debtors Protection (Amendment) Act, 1939 (X of 1939).

²Substituted for the words "Local Government" by the Government of India (Adaptation of Indian Laws) Order, 1937.

³Inserted by S. 2. of East Punjab Act III of 1948.

The Punjab Debtors' Protection Act, 1936

[PUNJAB ACT II OF 1936]

owner] shall not be liable in the execution of a decree or order of a court relating to a debt incurred by any of his predecessors in interest :

Provided that, when the debt has been expressly charged by way of mortgage on ancestral immovable property by a predecessor in interest, the court shall determine the liability of such land as if this section had not been passed :

Provided further, and subject to the foregoing proviso, that, in respect of a debt incurred before the commencement of this Act, ancestral property in the hands of a subsequent holder may be liable only if all the following conditions are satisfied :—

First.—That, before such liability is determined, the judgment-debtor shall be given sufficient opportunity to show cause against such liability.

Second.—That such liability was permitted by the rule of custom applicable to the Judgment-debtor immediately before the commencement of this Act, and nothing in this section shall prevent the judgment-debtor from proving the contrary.

Third.—That the decree-holder is able to show to the satisfaction of the court, that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court not in *ex parte* proceedings, holding that such a custom was applicable to the sub-tribe in the tahsil to which the judgment-debtor belongs.

Fourth.—That the judgment-debtor is not able to show to the satisfaction of the court, that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court, not in *ex parte* proceedings, holding to the contrary and subsequent to the judgment relied upon by the decree-holder.

10. Notwithstanding anything to the contrary contained in any other enactment for the time being in force :—

(1) standing crops, other than cotton and sugarcane, shall not be liable to attachment or sale in the execution of a decree ;

(2) standing trees apart from the land on which they stand shall not be liable to sale in the execution of a decree or an order of a court.

11. (1) Notwithstanding anything to the contrary contained in any other enactment for the time being in force, where an application has been made to execute a decree passed after the commencement of this Act against a debtor as defined in sub-section (2) of section 7 of the Punjab Relief of Indebtedness Act, 1934, and not being a decree granting an injunction, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of six years from—

(a) the date of the decree sought to be executed, or

Punjab Act
VII of 1934;

The Punjab Debtors' Protection Act, 1936

[PUNJAB ACT II of

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of six years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within six years immediately before the date of the application ; or

(b) to limit or otherwise affect the operation of article 183 of the First Schedule to the Indian Limitation Act, 1908.

IX of

CHAPTER III

BURDEN OF PROOF

Land exempt
from attach-
ment or sale
not to be
proceeded
with in exe-
cution of
money de-
crees.
Burden of
proof of con-
sideration.

¹[11-A. Notwithstanding anything contained in the Code of Civil Procedure, 1908, no decree for the payment of money shall be executed by the sale without attachment, or by the appointment of a receiver of land or the produce of land or an interest in land, which under any law for the time being in force, is exempt from attachment or sale.] V of

12. Notwithstanding anything to the contrary contained in any other enactment for the time being in force, the burden of proving that any consideration alleged to have been paid by a money-lender actually passed shall be on him ; unless the consideration is acknowledged by a debtor in his own handwriting or has been endorsed by the registering officer acting under clause (c) of sub-section (1) of section 58 of the Indian Registration Act, 1908, as having been paid in his presence. XVI c

¹Section 11-A was added by the Punjab Debtors Protection (Amendment) Act, 1938 (IX of 1938).

THE PUNJAB REGISTRATION OF MONEY-LENDERS ACT, 1938

Punjab Act No. III of 1938

Enactment. WHEREAS it is expedient to register money-lenders and to regulate their business in the manner hereinafter appearing, it is hereby enacted as follows :—

Title, and Enactment. 1. (1) This Act shall be called the Punjab Registration of Money-lenders Act, 1938.

(2) It shall extend to the Punjab.

(3) It shall come into force on such date as the Provincial Government may, by notification, direct.

Interpretation. 2. In this Act, unless there is anything repugnant in the subject or context—

(1) “Bank” means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature.

(2) “Collector” means a Collector of the District or such other officer not below the rank of Assistant Collector of the first grade as may be specially empowered by the Provincial Government to discharge the functions of a Collector for the purposes of this Act.

(3) “Commissioner” means the Commissioner of the Division in which a money-lender is registered.

(4) “Company” means a Company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.

VI of 1912.

(5) “Co-operative Society” means a society registered under the provisions of Co-operative Societies Act, 1912.

VI of 1912.

(6) “Court” includes a court acting in the exercise of its insolvency jurisdiction.

(7) “Interest” includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

The Punjab Registration of Money-lenders Act, 1938

[PUNJAB ACT III of]

- (8) "Loan" means an advance, whether secured or unsecured, of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include—
- (i) an advance in kind made by a landlord to his tenant for the purposes of husbandry ; provided the market value of the return does not exceed the market value of the advance as estimated at the time of advance ;
 - (ii) a deposit of money or other property in a Government Post Office Bank, or any other Bank, or with a company, or with a co-operative society or with any employer as security from his employees ;
 - (iii) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment ;
 - (iv) a loan advanced by or to the Central or any Provincial Government or by or to any local body under the authority of the Central or any Provincial Government ;
 - (v) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Indian Companies Act, 1913 ;
 - (vi) a loan advanced by a trader to a trader, in the regular course of business, in accordance with trade usage ;
 - (vii) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note.
- (9) "Money-lender" means a person, or a firm carrying on the business of advancing loans as defined in this Act, and shall include the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise, of such person or firm ; provided that nothing in this definition shall apply to—
- (a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money-lender together with all his rights and liabilities ; provided that such person only—
 - (i) winds up the estate of such money-lender ;
 - (ii) realises outstanding loans ;
 - (iii) does not renew any existing loan, nor advance any fresh loan ;
 - (b) a *bona fide* assignment by a money-lender of a single loan to any one other than the wife or husband of such assignor, as the case may be, or any person, who is descended from a common grandfather of the assignor.

The Punjab Registration of Money-lenders Act, 1938

[PUNJAB ACT III OF 1938]

(10) "Prescribed" means prescribed by rules made under this Act.

(11) "Trader" means a person who in the regular course of business, buys and sells goods or other property, whether moveable or immoveable, and shall include—
 a wholesale or a retail merchant,
 a commission agent,
 a broker,
 a manufacturer,
 a contractor,
 a factory owner,
 but shall not include a person who sells only his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

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 3. Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this Act, be dismissed, unless the money-lender—

- (a) at the time of the institution of the suit or presentation of the application for execution ; or
- (b) at the time of decreeing the suit or deciding the application for execution—
 - (i) is registered ; and
 - (ii) holds a valid licence, in such form and manner as may be prescribed ; or
 - (iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented ; or
 - (iv) if he is not already a registered and licensed money-lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending ; provided that in such a case, the suit or the application shall not be finally disposed of until the application of the money-lender for registration and grant of licence pending before the Collector is finally disposed of.

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 3.
 4. Every money-lender may apply for registration of his name at the office of the Collector of the District ; and his name shall be registered on furnishing such particulars as may be prescribed and on payment of a fee of Rs. 5.

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 5. Every money-lender may apply to the Collector for a licence which shall be granted for such period, in such form, and on such conditions, and on payment of such fees, as may be prescribed.

The Punjab Registration of Money-lenders Act, 1938

[PUNJAB ACT III OF 19

Explanation.—When an application for the renewal of a licence has been received from a licensed money-lender before the expiry of his licence, the existing licence shall be deemed to continue in force until orders on the application have been issued.

Where licence may be cancelled.

6. A licence may be cancelled by the Collector and shall not be renewed for such period as may be specified by him, if, after the commencement of this Act, a money-lender commits that he—

- (i) has been held by a Court to have contravened Punjab the provisions of section 3 of the Punjab Regulation I of 19 of Accounts Act, in more than two suits ;
- (ii) has had his suit dismissed, in whole or in part, under Punjab section 37 of the Punjab Relief of Indebtedness Act ; VII of
- (iii) has had his suit dismissed with a finding that he has made dishonestly or fraudulently, a material alteration in any document relating to a loan ;
- (iv) has had his suit dismissed with a finding that it is fraudulent ;
- (v) has been found by a Court to have charged higher rates of interest than those prescribed under section 5 of the Punjab Relief of Indebtedness Act in more Punjab than one suit ; VII of 1
- (vi) has been found guilty by a Court of forgery or cheating in respect of a money transaction :

Provided that the Collector shall not cancel a licence until the prescribed period of appeal, revision or review, as the case may be, has expired ; or in case of appeal, revision or review, the appeal, revision or review has been finally decided.

When Collector act.

7. (1) The Collector may take proceedings *suo moto* or on the application of any person interested for the cancellation of a money-lender's licence :

Provided that no licence shall be cancelled without giving the money-lender a notice in such form as may be prescribed.

(2) The Collector may, during the period of limitation for an appeal, either of his own motion, or on the application of a party interested, review his own order, provided no appeal is pending with the Commissioner.

Effect of cancellation of licence.

8. The name of money-lender whose licence has been cancelled under section 6, shall be struck off the register maintained at the office of the Collector for the registration of money-lenders :

Provided that a licence shall not be deemed to be cancelled nor the name of the money-lender deemed to be struck off the register during the period an appeal or an application for review or an application under section 11 is pending.

Saving.

9. Nothing in this Act shall apply to suits or applications for execution pending—

- (a) at the time of the commencement of this Act ; or
- (b) on the date of the cancellation of the licence of the money-lenders if before his current licence is granted or renewed, a Court has not given any such finding as

The Punjab Registration of Money-lenders Act, 1938

[PUNJAB ACT III OF 1938]

would render him liable to have his licence cancelled under the provisions of section 6 of this Act.

10. A money-lender may, after the termination of the period for which his licence has been cancelled, apply for re-registration and for the grant of a licence, to the Collector who shall, on his furnishing such particulars as may be prescribed register his name on payment of a fee of Rs. 5 and shall grant him a licence for such period, in such form and subject to such conditions and on payment of such fees, as may be prescribed.

11. (1) An appeal shall lie to the Commissioner against the order of the Collector under section 6 cancelling a licence provided that the appeal shall be instituted within 30 days of the order appealed against not including the period requisite for obtaining copies of such order.

(2) If the money-lender or the appellant is not present at the time of announcement of the original or the appellate order, the order shall be communicated to him in such manner as may be prescribed.

(3) The Commissioner may, in dismissing an appeal, grant to the money-lender a certificate specifying the loans in respect of which a suit may be instituted by him or the decrees in respect of which an application for execution may be presented.

(4) A money-lender without appealing against an order of the Collector under section 6, may within 30 days of the Collector's order cancelling his licence, apply to the Commissioner for a certificate of the nature specified in such clause (3).

(5) The Commissioner may, either on his own motion, or on the application of a party interested, review his own order at any time within 30 days of the communication of his appellate order to the money-lender concerned.

12. The Provincial Government may, by notification, exempt any person or class of persons from the operation of this Act or from any of the provisions thereof.

13. (1) Subject to previous publication the Provincial Government may make rules, for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may specify—

- (a) the place where a money-lender shall apply for re-registration for obtaining a licence, the district or districts in which a money-lender who operates in more than one district shall be required to register and the area in which a licence shall be valid ;
- (b) the scale of fees payable for the issue or renewal of a licence of a money-lender ;
- (c) the form of licence and the conditions under which a licence shall be issued ; and
- (d) the particulars which a money-lender shall supply at the time of being registered.

UTTAR PRADESH

The Usurious Loans Act¹, 1918

Act No. X of 1918

AMENDED BY ACT XXVIII OF 1926 AND ACT XXII
OF 1934

ADAPTED AND MODIFIED BY THE GOVERNMENT OF INDIA
(ADAPTATION OF INDIAN LAWS) ORDER, 1937

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind; it is hereby enacted as follows :—

1. Short Title and Extent.—(1) This Act may be called the Usurious Loans Act, 1918.

(2) It extends to the whole of British India, including British Baluchistan.

(3) The (Provincial Government)² may, by notification in the (Official Gazette)³, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) “Interest” means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest (or in the form of service to be rendered)⁴, or otherwise.

(2) “Loan” means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) “Suit to which this Act applies” means—(i)⁴ any suit—

(a) for the recovery of a loan made after the commencement of this Act ; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act ;⁵[or

¹. The act as in force in U. P.

². Subs. for L. G. by A. O.

³. Subs. for local official XXP Gazette by *ibid*.

⁴. Ins. by s. 2 (i) of U. P. Act XXIII of 1934.

⁵. The word “or” and clause c. were added by Sec. 2 of Act XXVIII of 1926.

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[U. P. Act XX

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act] ¹[or

(d) for account of a loan by a debtor against his creditor.]

3. *Re-opening of Transaction.*—(i) Any proceeding for ^{U.} the determination of claim under the ^{XX} ¹⁹³ ^{Encumbered Estate Act, 1934}].

(ii) Notwithstanding anything in the Usury Laws Repeal¹ Act, 1855², where, in any suit to which this Act applies, ^{Ac} whether heard *ex parte* or otherwise, the Court has reason to ^{XX} of ¹ believe:—

(a) that the interest is excessive ; [or]⁴

(b) that the transaction was, as between the parties thereto, the Court substantially unfair, ⁵[shall exercise one or more of the following powers] namely, may:—

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest :

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if any thing has been paid or allowed in account in respect of such liability, order the creditor to repay a sum which it considers to be repayable in respect thereof :

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just ;

Provided that, in the exercise of these powers, the Court shall not:—

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than ⁶[seventeen] years from the date of the transaction :

(ii) do anything which affects any decree of a Court.

Explanation.—In the case of a suit brought on a series of transactions the expression “the transactions” means, for the purposes of proviso (i), the first of such transactions.

¹. add. by s. 2 (2) of U. P. Act XXIII of 1934.

². Vol. IV.

³. U. C. A. Vol. I, page 103.

. Subs. for “and” by sec. 3 U. P. Act XXIII of 1934.

. Subs. for “may exercise one or all of any of the following powers” s. 4 of *ibid*.

⁶. Subs. by Sec. 5 of U. P. Act XXIII of 1934 for “twelve” which was subs. for “six” by sec. 3 of XXVIII of 1926.

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[U. P. Act X of 1918]

(a) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated and the total advantage which may reasonably be taken to have been expected from the transaction :

[Provided that in the case of loans secured by a first mortgage the court shall deem the interest excessive if—

(1) the rate exceeds 12% per annum; or

(2) the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 12% per annum and the interval between rests were six months:

Provided also that in the case of loans secured otherwise than by a first mortgage the court may, if it considers that the nature of the security warrants it, deem that the interest is not excessive even though the rate exceeds 12 per cent. per annum or the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 12 per cent. per annum and the interval between rests six months :

Provided also that in the case of unsecured loans the court shall, unless the contrary is proved, deem the interest excessive if—

(1) the rate exceeds 24 per cent. per annum ; or

(2) the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 24 per cent. per annum and the interval between rests were six months :

Provided also that in the case of secured loans the court shall not deem the interest excessive if—

(1) the rate does not exceed 7 per cent. per annum ; and

(2) the amount of interest that might become due at any time does not exceed the amount that would become due at that time if the rate were 9 per cent. per annum and the interval between rests were six months :

Provided also that in the case of unsecured loans the Court shall not deem the interest excessive if -

(1) the rate does not exceed 9 per cent. per annum; and

(2) the amount of interest that might become due at any time does not exceed the amount of interest that would become due at that time if the rate were 9 per cent. per annum and the interval between the rests were six months.]

(c) In considering the question of risk, the Court shall into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.—Interest may of itself be sufficient evidence that a transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement of security in respect of a loan/ * [or for the redemption of any such security].

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona-fide*, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of these sub-sections the word "notice" shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882. **Act IV of 1882.**

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

4. Insolvency Proceedings.—On any application relating to the admission or amount of a proof of a loan in any solvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies.

THE UNITED PROVINCES REGULATION OF AGRICULTURAL CREDIT ACT, 1940

United Provinces Act No. XIV of 1940

AS RE-ENACTED BY U. P. ACT XIII of 1948

An Act to prevent excessive borrowing by agriculturists

Preamble.

WHEREAS it is expedient to prevent excessive borrowing by agriculturists and for this purpose to limit the amount that can be obtained by execution of decrees against agricultural produce and land and to restrict the voluntary alienation of land:

AND WHEREAS by the Proclamation, dated the third day of November, 1939, promulgated under section 93 of the Government of India Act, 1935, the Governor of the United Provinces has assumed to himself all powers vested by or under the aforesaid Act in the Provincial Legislature:

AND WHEREAS the continuance in force of the said Proclamation has been approved by a resolution of both Houses of Parliament:

NOW, THEREFORE, the Governor in exercise of the powers aforesaid is pleased to make the following Act:

CHAPTER I

PRELIMINARY

Act titled
tent an
nment-
nt.

1. (1) This Act may be called "the United Provinces Regulation of Agricultural Credit Act, 1940."

(2) It extends to the whole of the United Provinces except the Jaunsar-Bawar pargana of the Dehra Dun district and the portion of the Mirzapur district, south of the Kaimur Range.

(3) It shall come into force on such date *as the Governor may, by notification in the official Gazette, appoint.

*The Act came into force on January 1, 1941, *vide* notification No. 158(1)/I—39 dated December 23, 1940, published in the United Provinces Gazette 1940, Part I, page 822.

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[U. P. Act XIV of 1940]

Interpretation.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) subject to the provisions of the following sub-sections, all words and expressions which are defined or explained in the United Provinces Land Revenue Act, 1901, or the United Provinces Tenancy Act, 1939, shall have the meanings assigned to them therein ;

Agricultural produce.

(2) "agricultural produce" means the agricultural produce of an agriculturist raised by him or by his servants or by labour hired by him and includes crops whether standing or gathered, and the fruit and flowers of trees and plants;

Co-operative society.

(3) "co-operative society" means a society registered or deemed to be registered under the provisions of the Co-operative Societies Act, 1912 ;

(4) "land" means land in a mahal in the United Provinces, but does not include land occupied by buildings or appurtenant thereto, or land within the limits of any municipality cantonment or notified area or in areas to which the Bundelkhand Alienation of Land Act, 1903, extends, land of a member of a tribe which, by virtue of a notification issued under section 4 of that Act, is deemed to be an agricultural tribe for the purposes of that Act ;

(5) "lease" means a lease of proprietary rights in land and its grammatical variations have corresponding meaning;

(6) "loan" means an advance, whether in cash or kind made on or after the first day of June, 1940, and includes any transaction which is in substance a loan but does not include an advance by the Central or any Provincial Government, or by a local authority authorized by the Provincial Government to grant loans or by a co-operative society;

Mortgage, usufructuary mortgage, charge, etc.

(7) "mortgage", "mortgagor", "mortgagee", "mortgage money", "usufructuary mortgage" and "charge" shall have the meanings assigned to them in the Transfer of Property Act, 1882 ;

Local rate.

(8) "local rate" means the rate payable by, or recoverable from, a proprietor under the provisions of the United Provinces Local Rates Act, 1914 ;

Permanent alienation.

(9) "permanent alienation" means a transfer by sale, exchange, or gift but does not include a transfer by gift for a charitable purpose or a transfer by will;

Prescribed.

(10) "prescribed" means prescribed by this Act or by rules made thereunder ;

Proprietor.

(11) "proprietor" includes in Oudh an under-proprietor and in Agra a superior and an inferior proprietor, a permanent tenure-holder and a fixed-rate tenant, but does not include a superior proprietor in Agra to whom the provisions of section 77 of the United Provinces Land Revenue Act, 1901, apply ;

Protected and.

(12) "protected land" means—

(a) with reference to a proprietor liable to pay local rate not exceeding twenty-five rupees per annum, all his land ; and

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(b) with reference to a proprietor liable to pay local rate exceeding twenty-five rupees per annum, so much of his land as is declared to be protected under the provisions of section 4 and has not ceased to be protected land in accordance with the provisions of section 5 ;

or in (13) "successor in interest" includes a person who acquires an interest by survivorship.

Explanation. 3. For the purposes of this Act—

(a) local rate in respect of which a notification of exemption has been issued under the provisions of clause (a) of section 15 of the United Provinces Local Rates Act, 1914, shall be deemed to be payable ;

U. P. I of 1914.

(b) a joint proprietor shall be deemed to be the proprietor of so much of the joint land as appertains to his share and, subject to the provisions of clause (c), each member of a joint Hindu family shall be deemed to be the proprietor of so much of the land of such joint family as appertains to his share ;

(c) a member of a joint Hindu family, any of whose male lineal ascendants in the male line of ascent is alive and joint with such member, shall not be deemed to be a proprietor and the eldest surviving ascendant in the male line of ascent shall be deemed to be the proprietor not only of his own share but also of the share of such member.

CHAPTER II

PROTECTED LAND

Application have land are protected 4. (1) A proprietor liable to pay an amount exceeding twenty-five rupees per annum as local rate may apply in the prescribed form stating the prescribed particulars to the assistant collector in charge of the sub-division in which any portion of his land is situated that the land specified in the application be declared to be protected land and the assistant collector shall, after satisfying himself, in such manner as he thinks fit, that the local rate payable in respect of the applicant's protected land, if any, together with that payable in respect of the land specified in the application does not exceed twenty-five rupees per annum, declare the land specified in the application to be protected land from the date of such declaration and shall cause an entry to be made in the record of rights accordingly.

(2) If the local rate payable in respect of the applicant's protected land, if any, together with that payable in respect of the land specified in the application exceeds twenty-five rupees per annum the assistant collector shall dismiss the application ;

Provided that the assistant collector may, if he thinks fit, allow the application to be amended.

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**When
protected
land
ceases to be
protected.**

5. (1) When land in respect of which a declaration has been made under section 4 is acquired by permanent alienation or inheritance or bequest by a proprietor liable to pay local rate exceeding twenty-five rupees, or who by reason of such acquisition becomes liable to pay local rate exceeding twenty-five rupees, the land in respect of which such declaration was made shall cease to be protected land from the date of such acquisition:

Provided that such land shall not cease to be protected land if the local rate payable in respect of the protected land originally held by such proprietor, together with the local rate in respect of the land so acquired does not exceed twenty-five rupees:

Provided further that nothing in this section shall affect the right of a proprietor to apply under section 4 for a declaration that so much of the land acquired by him is protected land the local rate payable in respect of which, together with the local rate payable in respect of the protected land already held by him, does not exceed twenty-five rupees.

(2) When land has ceased to be protected land under the provisions of sub-section (1), the entry relating thereto made in the record of rights in accordance with the provisions of sub-section (1) of section 4 shall be expunged.

(3) Nothing in this section shall affect the provisions of section 11, relating to the protection for land from sale in execution of a decree based on a loan, if the land was protected land at the date of the loan.

**Application
for a
declaration
of status of
land**

6. Any person may for the removal of doubt apply to the assistant collector in charge of a sub-division for a declaration that any land situated in that sub-division is or is not protected land and after making such inquiry as he thinks fit and where the applicant is not the proprietor, after giving notice to the proprietor, the assistant collector shall decide whether or not the land is protected land and shall make a declaration accordingly and shall, if necessary, cause the record of rights to be amended.

**Jurisdiction
of Civil
courts
excluded.**

7. Without prejudice to the right of any person to establish his title to any land in respect of which a declaration has been made under the provisions of section 4 or section 6, such declaration shall not be questioned in any court except as provided in section 31, and if under the provisions of section 6 any land is declared not to be protected land, such land shall for all purposes be deemed not to be protected land at the date of such declaration.

CHAPTER III.

EXECUTION OF DECREES

**Attachment
of
agricultural
produce.**

8. Notwithstanding anything in the Code of Civil Procedure, 1908, not more than one-third of the agricultural produce of a judgment-debtor shall be liable to attachment in execution of any decree or decrees based on a loan or loans.

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nt
section
of the
civil
procedure

9. For the purposes of executing a decree based on a loan against the agricultural produce of a judgment-debtor, the word "six" in section 48 of the Code of Civil Procedure, 1908, shall be deemed to have been substituted for the word "twelve", wherever it occurs. V of 1908.

execution
of decrees
against
protected
land to be
transferred
to the
collector.

10. The execution of a decree in which a court has ordered the sale of, or the appointment of a receiver for, any land shall be transferred to the collector, and such transfer shall be deemed to have been made under the provisions of section 68 of the Code of Civil Procedure, 1908. V of 1908. The provisions of the said Code and of the rules made thereunder, so far as they are not inconsistent with the provisions of this Act, shall apply to such a decree as if it was transferred under section 68 of the said Code.

execution
of decrees
against pro-
tected land.

11. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any law for the time being in force where the execution of a decree based on a loan has been transferred to the collector under the provisions of section 10, and the land against which such decree is sought to be executed was protected land on the date of the loan, or, when the loan consists of more than one transaction, on the date of the earliest of such transactions, the collector may execute such decree in one of the following ways only, namely— V of 1908

- (a) by granting to the decree-holder, or to any person who pays the amount due under the decree, a mortgage of such land or any part thereof in the form prescribed by clause (a) of sub-section (1) of section 13; or
- (b) by the sale of such land or any part thereof, where the collector is satisfied that such sale will not be adverse to the interests of the judgment-debtor, and that the judgment-debtor has sufficient means of livelihood apart from such land.

(2) A mortgage granted under the provisions of clause (a) of sub-section (1) shall be subject to the provisions of section 14 and to such conditions consistent with the provisions of section 15 as the collector may think fit to impose. The mortgage shall be for such part of the land and for such period not exceeding twenty years as the collector may determine in the manner prescribed.

(3) Where several persons holding decrees based on loans move the collector, before he has granted a mortgage under the provisions of clause (a) of sub-section (1) for execution of their decrees against the same judgment-debtor by grant of a mortgage of protected land, the collector shall proceed in such manner as may be prescribed.

(4) Where the execution of a decree is transferred to the collector under the provisions of section 10, the court transferring the decree shall determine whether the decree is based on a loan, and if it is so based on a loan, the fact shall be stated in the order transferring the decree.

CHAPTER IV

VOLUNTARY ALIENATION OF PROTECTED LAND

**Restriction
of right to
alienate
protected
land.**

12. No proprietor shall mortgage or lease or make a permanent alienation of the whole or any part of his protected land or alienate or charge the produce of such land otherwise than in accordance with the provisions of this Act.

**Permissible
forms of
mortgage.**

13. (1) After the commencement of this Act, every mortgage of protected land shall be made only in one of the following forms; namely—

- (a) a usufructuary mortgage for which the mortgagor delivers proprietary possession of the land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on the condition that after the expiry of such term not exceeding twenty years, as may be agreed upon, the land shall be re-delivered to the mortgagor;
- (b) a mortgage without possession subject to the condition that if the mortgagor fails to pay principal and interest according to the contract, the mortgagee may apply to the court of competent jurisdiction to place him in possession of the land; or
- (c) any other form which the Provincial Government may prescribe.

(2) Where a mortgagee makes an application under clause (b) of sub-section (1), the court may put him in possession of the land for such term not exceeding twenty years as it may, in the circumstances of the case, consider to be equitable, and the mortgage, from the date of such possession, shall be deemed to be a usufructuary mortgage made under clause (a) of sub-section (1) for the term allowed by the court.

(3) Where in a usufructuary mortgage made after the commencement of this Act no term or a term exceeding twenty years is agreed upon such mortgage shall be deemed to be a usufructuary mortgage made under clause (a) of sub-section (1) for a term of twenty years.

**Conditions
applicable to
permitted
mortgages.**

14. In a mortgage of protected land in one of the forms permitted by or under the provisions of section 13, the following conditions shall apply ;

- (a) the mortgage shall be for a complete number of years ;
- (b) possession shall be delivered to the mortgagee and resumed by the mortgagor on the expiry of the term of the mortgage or on redemption before the expiry of that term, only between the first day of May and the thirtieth day of June in any year;
- (c) the mortgage debt shall be extinguished on the expiry of the term for which the mortgagee is authorized to remain in possession ;

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- (d) the sum of money to be paid by a mortgagor on redemption of his land before the expiry of the term of the mortgage shall be such proportion of the mortgage money as may be prescribed, less any amount that may be due to the mortgagor for any loss or damage caused to the mortgaged property by any act of the mortgagee which is permanently injurious to the mortgaged property, other than an act which may have been permitted under sub-section (1) of section 15.

Additional
conditions
as permitted
in mortgages.

15. (1) In a mortgage made under the provisions of section 13, the following conditions may be added by agreement between the parties:

- (a) conditions defining the right of a mortgagor or mortgagee in possession to cut, sell or mortgage trees or to do any act affecting the permanent value of the land and
- (b) any other conditions which the Provincial Government may permit by rules made in this behalf.

(2) In mortgages made under section 13 any condition not permitted by or under the provisions of this Act shall be void.

Mortgage of
protected
land by con-
ditional sale
prohibited.

16. Any condition contained in a deed of mortgage made after the commencement of this Act, which would operate by way of conditional sale of any protected land, shall be void in so far as it affects such land.

Restriction
on right to
lease pro-
tected land.

17. (1) After the commencement of this Act, no proprietor shall make a lease of his proprietary rights in protected land in perpetuity or for a term exceeding twenty years.

(2) Any such lease made in perpetuity or for a term exceeding twenty years shall be deemed to be a lease for a term of twenty years.

Alienation
of and
charge, on
the produce
of protected
land.

18. (1) After the commencement of this Act, no person shall alienate or charge the agricultural produce of his protected land or any part of or share in such produce for a term exceeding one year.

(2) An agreement made after the commencement of this Act which purports to alienate or charge the produce of protected land or any part of or share in such produce for a term exceeding one year shall take effect as if it had been made for a term of one year.

Restriction
on further
temporary
alienation.

19. (1) During the currency of a mortgage of protected land in the form prescribed by clause (a) of sub-section (1) of section 13 or during the currency of a lease of protected land permitted by this Act, the proprietor shall be at liberty to make a further temporary alienation of the same land for such term, if any, as together with the term of the current mortgage or lease and the term or terms of any temporary alienation or alienations immediately preceding the current mortgage or lease will make up a term not exceeding the full term of twenty years.

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(2) Any such further temporary alienation, made for a longer term than is permitted by this section, shall be deemed to be a temporary alienation for the term permitted by this section.

Subsequent mortgage or lease of protected land.

20. Notwithstanding anything in any law or contract any agreement made before the expiration of a mortgage or lease of protected land which purports to extend or to give to any person the right to extend the term of such mortgage or lease otherwise than in accordance with the provisions of section 19 shall be void, and any mortgage or lease of protected land made by a proprietor within a period of five years from the expiration of a previous mortgage or lease of the same protected land shall be void :

Provided that where the term of such previous mortgage or lease, together with the term or terms of any temporary alienation or alienations immediately preceding it, is less than twenty years, then within such period of five years a further temporary alienation may be made if the term of such further temporary alienation, together with the term or terms of all such previous temporary alienations as are taken into account in this proviso, is less than twenty years.

Effect of mortgage made otherwise than in accordance with the Act,

21. (1) Where in any suit or proceeding before a civil court of competent jurisdiction relating to a mortgage of protected land in which the parties to such mortgage or their successors in interest have been impleaded, it appears that such mortgage has been made otherwise than in accordance with this Act the court shall revise and alter the terms of such mortgage so as to substitute for it a mortgage in a form permitted by or under the provisions of this Act to which the mortgagee appears to the court to be equitably entitled and thereupon the revised mortgage shall take effect in supersession of the original mortgage.

(2) An appeal shall lie from an order made under sub-section (1) as from an order under the provisions of the Code of Civil Procedure, 1908.

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Ejection of mortgagee after expiry of term.

22. (1) If a person in possession of protected land by virtue of a mortgage made after the commencement of this Act, remains in possession of such land beyond the date on which, by the terms of the mortgage or the provisions of this Act, the land is required to be re-delivered to the mortgagor, the mortgagor may apply to the court of competent jurisdiction that such person be ejected from such land and the applicant be placed in possession.

(2) The Court shall, on being satisfied that the person making an application under the provisions of sub-section (1) is entitled to possession, grant such application and may also, subject to payment of the proper court-fee, award to the applicant such sum on account of mesne profits or compensation or both as it deems reasonable.

(3) For the purpose of this section "mortgage" includes a permanent alienation of protected land which under this Act takes effect as a mortgage.

(4) An appeal shall lie against an order awarding any sum to the applicant under sub-section (2) as from a decree.

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Ejection
of lessee
after
expiry of
term.

23. A lessee remaining in possession of protected land beyond the terms permitted by the lease or the provisions of this Act shall be liable to ejection in accordance with the procedure prescribed in the United Provinces Tenancy Act, 1939, for the ejection of thekadars.

XVII of
1939,

Permanent
alienation
of protected
land.

24. (1) A proprietor who wishes to make a permanent alienation of the whole or any part of his protected land shall apply for permission to the assistant collector in charge of the sub-division in which his protected land or that part of it which is assessed to the largest amount of local rate, is situated.

(2) The assistant collector shall make such inquiry as appears necessary and shall decide the application in accordance with rules made by the Provincial Government in this behalf.

(3) An order under sub-section (2) granting permission to alienate shall be in writing and shall specify the period during which such permission shall remain operative.

(4) An order sanctioning a permanent alienation of protected land shall not affect any question of title or any question relating to reversionary right or right of pre-emption.

Effect of
permanent
alienation
made
otherwise
than in
accordance
with the
Act.

25. (1) Where a permanent alienation of protected land has been made otherwise than in accordance with the provisions of this Act, it shall take effect as a mortgage in the form prescribed by clause (a) of sub-section (1) of section 13.

(2) In any suit or proceeding before a civil court of competent jurisdiction relating to a permanent alienation of protected land made otherwise than in accordance with the provisions of this Act, in which the parties to such alienation or their successors in interest have been impleaded, the court shall revise and alter the terms of such alienation so as to substitute for it a mortgage in the form prescribed by clause (a) of sub-section (1) of section 13 on such terms as the court considers to be equitable and thereupon such mortgage shall take effect in supersession of such alienation.

Provided that a decision of a Revenue court made in exercise of the powers conferred by section 26 shall, in so far as it relates to the terms of the mortgage to which such court has decided that the alienee is equitably entitled, be conclusive as between the parties to the alienation and their successors in interest, and the propriety of such terms shall not be questioned in any court except by way of appeal or revision as provided in section 30.

(3) An appeal shall lie from an order made under sub-section (2) as from an order under the provisions of the Code of Civil Procedure, 1908.

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Proceedings
in mutation.

26. (1) If in the course of proceedings under sections 34 U. P. III of and 35 of the United Provinces Land Revenue Act, 1901, 1901. the tahsildar after making a summary inquiry, has reason to believe that a permanent alienation of protected land has been made otherwise than in accordance with the provisions of this Act, he shall, notwithstanding anything contained

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in section 35 of the United Provinces Land Revenue Act, 1901, refer the case to the assistant collector in charge of the sub-division.

(2) If the assistant collector finds that a permanent alienation of protected land has been made otherwise than in accordance with the provisions of this Act, he shall order that such alienation shall take effect as a mortgage in the form prescribed by clause (a) of sub-section (1) of section 13 on such terms as he may consider to be equitable in the circumstances of the case, and shall cause an entry to be made in the record of rights accordingly:

Provided that the assistant collector may, on the application of the alienor, proceed to deal with the case, in so far as it affects protected land, as if an application has been made under section 24 and may grant permission, under the provisions of that section and such permission, if granted shall be deemed to have been given before the alienation was made.

(3) An order passed under this section shall not affect any question of title or any question relating to reversionary right or right of pre-emption.

CHAPTER V

MISCELLANEOUS

Saving. 27. Nothing in this Act shall effect the recovery of any sum under any of the provisions of the Agra Tenancy Act, 1926, the United Provinces Tenancy Act, 1939, or the United Provinces Land Revenue Act, 1901, or the right of the Central or the Provincial Government to recover arrears of land revenue, or any dues recoverable under the provisions of any law as arrears of land revenue. U. P. III 1926. U XVIII c 1939. U III of 19

Separate trials. 28. Where causes of action in respect of an advance made before the first day of June, 1940, and in respect of an advance made on or after that date, have been joined in one suit, the court shall order separate trials in respect of the claim based on the advance made before the first day of June, 1940, and in respect of that based on the advance made on or after that date.

Appeal to be allowed by the Act. 29. No appeal shall lie from a decree or order made by any court under this Act except as provided in this Act.

Appeal against orders for sale of protected land under section II. 30. An order made by the collector under section 11 for the sale of protected land shall be subject appeal to, and revision by, superior Revenue authorities in accordance with the rules made under clause (c) of sub-section (1) of section 70 of the Code of Civil Procedure, 1908. V of 194

Appeal against orders under sections 4, 5 24 and 26. 31. An order made by an assistant collector under section 4, section 5, section 24 or section 26 shall be subject to appeal, reference and revision as if the provisions of Chapter X of the United Provinces Land Revenue Act, 1901, applied to such order. U. P. II 190

The U. P. Regulation of Agricultural credit Act, 1940

[U. P. Act XIV of 1940]

exercise of
powers.

32. The powers under this Act of an assistant collector in charge of a sub-division may, under a general or special order in writing of the collector, be exercised by an assistant collector of the first class and the Provincial Government may confer the powers of a collector under this Act on any assistant collector of the first class.

copies of
certificate
and order to
be sent to
registering
officers.

33. (1) Where the collector grants a mortgage under the provisions of section 11, he shall, subject to the payment of the duty payable under the provisions of the Indian Stamp Act, 1899, as applicable to the United Provinces, grant to the mortgagee a certificate containing such particulars as may be prescribed, and the provisions of the Code of Civil Procedure, 1908, shall so far as they may apply as if such certificate were a certificate of sale granted under rule 94 of Order XXI of the First Schedule of the said Code. II of 1899.

(2) When the collector grants a certificate under subsection (1) or the court revises and alters the terms of a mortgage under section 21, or revises and alters the terms of a permanent alienation under section 25, or when an assistant collector passes an order under section 26 that a permanent alienation of protected land shall take effect as a mortgage, the collector, the court, or the assistant collector, as the case may be, shall send a copy of the certificate or the order to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate or the order is situate, and such officer shall file the copy in his book no. 1. V of 1908.

application
Act IV of
1882,

34. The provisions of the Transfer of Property Act, 1882, shall, except in so far as they are inconsistent with the provisions of this Act, apply to mortgages of protected land made by a proprietor, or granted by the collector or ordered by any Civil or Revenue court in accordance with the provisions of this Act and such mortgages shall be deemed to have been made under the provisions of the Transfer of Property Act, 1882. IV of 1882.

powers to
make rules.

35. The Provincial Government may make rules consistent with this Act for carrying out the purposes of this Act.

THE UNITED PROVINCES DEBT REDEMPTION ACT, 1940

United Provinces Act No. XIII of 1940

AS AMENDED BY ACT VI OF 1941

AND

**ACT NO. VI OF 1942 AND RE-ENACTED BY U. P. ACT
XIII OF 1948.**

An Act to provide for further relief from indebtedness to agriculturists and workmen

WHEREAS it is expedient to provide for further relief from indebtedness to agriculturists and workmen in the United Provinces ;

AND WHEREAS by the Proclamation, dated the third day of November, 1939, promulgated under section 93 of the Government of India Act, 1935, the Governor of the United Provinces has assumed to himself all powers vested by or under the aforesaid Act in the Provincial Legislature :

AND WHEREAS the continuance in force of the said Proclamation has been approved by a resolution of both Houses of Parliament :

NOW, THEREFORE, the Governor in exercise of the powers aforesaid is pleased to make the following Act :

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the United Provinces Debt Redemption Act, 1940.

(2) It extends to the whole of the United Provinces except the Jaunsar-Bawar pargana of the Dehra Dun District and the portion of the Mirzapur District south of the Kaimur Range.

(3) It shall come into force on such date *as the Governor may, by notification in the official Gazette, appoint.

*The Act came into force on January 1, 1941, vide notification No. 158 (1)/I—39, dated December 23, published in the United Provinces Gazette, 1940, Part I, P. 822.

The U. P. Debt Redemption Act, 1940

[U. P. Act XIII OF 1940]

Interpreta-
tion.

2. In this Act unless there is anything repugnant in the subject or context—

(1) subject to the provisions of the following sub-sections, all words and expressions which are defined or explained in the United Provinces Land Revenue Act, 1901 or the United Provinces Tenancy Act, 1939, shall have the meanings assigned to them therein ;

U, P, I
1901
U, P, X
of 1939

(2) “ agricultural produce ” means the agricultural produce of an agriculturist raised by him or by his servants or by labour hired by him and includes crops, whether standing or gathered, and the fruit and flowers of trees and plants ;

(3) “ agriculturist ” means a proprietor of a mahal or of a share in or portion of a mahal or a tenant :

Provided that no such proprietor or tenant shall be deemed to be an agriculturist if —

(a) the aggregate of the rent, if any, and of ten times the local rate, if any, payable by him exceeds one thousand rupees, or

(b) he is assessed to income-tax under the Indian Income-tax Act, 1922, or under the incometax-law of an Indian State :

XI of 19

Provided further that no person shall be deemed to be a proprietor or tenant merely by reason of his having acquired proprietary or tenancy rights, otherwise than by inheritance or survivorship, after the first day of June, 1940.

Explanation I.—Where a proprietor or a tenant has a subsisting interest in land, but by reason of a temporary transfer does not for the time being pay the rent or local rate payable in respect of that land, such rent or local rate shall, for the purposes of this sub-section, be deemed to be payable by him.

Explanation II.—If on account of a fall in the price of agricultural produce a temporary remission has been made in the land revenue payable by a proprietor or in the rent payable by a tenant, the local rate payable by such proprietor shall, for the purposes of this sub-section be deemed to have been reduced in the same proportion as the land revenue and the rent payable by such tenant shall be deemed to be the rent as reduced by such temporary remission in rent.

(4) “ bank ” means a company which carries on the business of banking and was before the first day of June, 1940, registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the colonies or dependencies thereof or in British India or in any Indian State or incorporated by Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Central Legislature ;

(5) "co-operative society" means a society registered or deemed to be registered under the provisions of the Co-operative Societies Act, 1912;

(6) "decree to which this Act applies" means a decree passed either before or after the commencement of this Act in a suit to which this Act applies;

(7) "interest" means the return to be made over and above what was actually advanced, whether the same is charged or sought to be recovered specifically by way of interest, or usufruct or service to be rendered or otherwise;

(8) "land" means land in a mahal in the United Provinces but does not include land occupied by buildings nor appurtenant thereto or land within the limits of any municipality, cantonment or notified area;

(9) "loan" means an advance in cash or kind made before the first day of June, 1940, recoverable from an agriculturist or a workman or from any such person and other persons jointly or from the property of an agriculturist or workman and includes any transaction which in substance amounts to such advance, but does not include an advance the liability for the repayment of which has, by a contract with the borrower or his heir or successor or by sale in execution of a decree been transferred to another person or an advance by the Central or Provincial Government or by a local authority authorized by the Provincial Government to make advances or by a co-operative society or by a scheduled bank;

Provided that an advance recoverable from an agriculturist or from an agriculturist and other persons jointly shall not be deemed to be a loan for the purposes of this Act unless such advance was made to an agriculturist or to an agriculturist and other persons jointly.

(10) "local rate" means the rate ^{U. P. I of 1911.} [which under the U. P. Local Rates Act 1911, is payable by, or recoverable from an agriculturist possessing heritable and transferable rights];

(11) "prescribed" means prescribed by this Act or by rules made thereunder;

(12) "principal" means the amount originally advanced;

(13) "proprietor" includes a superior proprietor and an inferior proprietor but does not include a mortgagee ^{U. P. III of 1901.} or in Agra a superior proprietor to whom the provisions of section 77 of the United Provinces Land Revenue Act 1901, apply;

(14) "rent" does not include sayar;

The U. P. Debt Redemption Act, 1940

[U. P. ACT XIII OF 1940]

(15) "scheduled bank" means any bank included at the commencement of this Act in the Second Schedule to the Reserve Bank of India Act, 1934; II of 1934.

(16) "secured loan" means a loan the repayment of which has been secured by a mortgage of or charge on specific property, or by a pledge;

(17) "suit to which this Act applies" means any suit or proceeding relating to a loan, but does not include proceedings under the provisions of the United Provinces Encumbered Estates Act, 1934; U. P. XXV of 1934.

(18) "tenant" includes a person entered in the register maintained under the provisions of clause

(b) or clause (c) of section 32 of the United Provinces Land Revenue Act, 1901, a rentfree grantee, U. P. III of 1901.
a grantee at a favourable rate of rent and a sub-tenant but does not include grove-holder or a thekadar;

(19) "unsecured loan" means a loan which is not a secured loan;

(20) "workman" means a person who is not a proprietor or a tenant and—

(a) who earned wages within the meaning of sub-section (vi) of section 2 of the Payment of Wages Act, 1936, within the twelve months preceeding the first day of June, 1940, which did not exceed Rs. 600 in the said twelve months and did not exceed Rs. 60 in any such months, or

(b) who does not ordinarily reside within a municipality, cantonment or notified area and who belongs to one of the classes specified in the First Schedule.

Explanation

3. For the purposes of this Act—

(a) in any proceeding relating to an advance, pending when this Act comes into force or instituted thereafter, the status of the debtor who is a party to such proceedings shall be deemed to be the status which he had, at the commencement of the Act, or on the date of the institution of the proceedings as the case may be;

(b) rent which has been remitted or suspended either in whole or in part, on account of a failure of the crop shall be deemed to be payable in the year in which it was so remitted or suspended;

(c) local rate in respect of which a notification of exemption has been issued under the provisions of section 15 of the United Provinces Local Rates Act, 1914, shall be deemed to be payable; U. P. I of 1914.

(d) a joint proprietor or a joint tenant shall be deemed to be the proprietor or tenant of so much of the joint property or joint tenancy, not being the property or tenancy, as the case may be, of a joint Hindu family, as appertains to his share;

The U. P. Debt Redemption Act, 1940

[U. P. ACT XIII OF 1940]

(e) where the aggregate of the rent and ten times the local rate, if any, payable by a joint Hindu family—

- (i) does not exceed one thousand rupees, such family and every member of it shall be deemed to be an agriculturist ;
- (ii) exceeds one thousand rupees, a member of such family shall be deemed to be an agriculturist only if the aggregate of the rent and ten times the local rate payable in respect of his share and the shares of his male lineal ascendants and descendants in the joint family property does not exceed one thousand rupees :

Provided that no joint Hindu family or any member of it shall be deemed to be an agriculturist if such family or member is assessed to income-tax, or in the case of a member of such family if the aggregate of the rent and ten times the local rate payable in respect of such member's share and the shares of his male lineal ascendants and descendants in the joint family property and in respect of his self-acquired property, if any, exceeds one thousand rupees ;

(f) a loan shall not be deemed to be due jointly from an agriculturist or workman and another person if such other person's liability in connexion with such loan is that of a surety and such person and such agriculturist or workman shall not be deemed to be joint debtors.

4. (1) The provisions of this Act shall not apply to a suit for the recovery of a loan from an agriculturist where the creditor declares in accordance with the provisions of sub-section (2) that if a decree is passed in his favour either for the whole or part of the claim such decree shall not be executed against the land, agricultural produce or person of such agriculturist.

(2) The declaration mentioned in sub-section (1) shall in the case of a suit pending at the commencement of this Act, be made at any time before the decision of the suit and in the case of a suit instituted after the commencement of this Act, in the plaint.

(3) No decree recoverable from an agriculturist shall be amended under the provisions of this Act if the creditor declares that such decree shall not be executed against the land, agricultural produce or person of such agriculturist :

Provided that no such declaration shall be made in a suit or proceeding relating to a loan recoverable from an agriculturist who also belongs to one of the classes specified in clause (a) or clause (b) of sub-section (20) of section 2 :

Provided further that where in a suit decided after the commencement of this Act the creditor has had an opportunity of making the declaration required by sub-section (1) no declaration shall, in proceedings for the execution of a decree obtained by the creditor in such suit be made by the decree-holder under sub-section (3) :

Provided also that no declaration shall be made under sub-section (3) where the creditor has already applied for execution against the land, agricultural produce or person of such agriculturist.

(4) Where a declaration has been made under the provisions of this section no order shall be made for the execution of the decree against the land, agricultural produce or person of the agriculturist in respect of whom the declaration was made or his heir or successor, and the court shall record a direction to this effect in the decree.

CHAPTER II

SUITS AND DECREES ON LOANS

**Separate
trials.**

5. Where causes of action in respect of a loan and in respect of an advance in cash or kind made on or after the first day of June, 1940, have been joined in one suit, the court shall order separate trials in respect of the claim based on such loan and in respect of that based on such advance.

**Forum of
suits.**

6. Notwithstanding anything contained in any other enactment for the time being in force, every suit to which this Act applies shall be instituted in a court within the local limits of the jurisdiction of which—

- (a) the defendant or, if there are more than one, any of the defendants ordinarily resides; or
- (b) in case the defendant or, if there are more than one all the defendants, reside without the limits of the United Provinces—
 - (i) the holding or the land of the defendant or, if there are more than one, of any of the defendants is situate; or
 - (ii) the defendant or, if there are more than one, any of the defendants carries on the trade or profession by virtue of which he is a workman.

**Debtor's
right to sue.**

7. Notwithstanding the terms of any contract regarding the date or dates on which a loan shall become due, a suit to which this Act applies for the redemption of a mortgage or for accounts may be instituted by a debtor at any time after the commencement of this Act.

**Amendment
of decrees.**

8. (1) Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount due under a decree to which this Act applies passed before the commencement of this Act, may apply to the civil court which passed the decree or to which the execution of the decree has been transferred, for the amendment of the decree by reduction according to the provisions of this Act of the amount due under it, and on receipt of such application the court shall, after notice to the opposite party, calculate the amount due from the applicant in accordance with the provisions of sections 9 and 10 and shall amend the decree accordingly :

Provided that if the decree was passed by a court outside the United Provinces, it shall not be executed against the land or agricultural produce or person of the judgment-debtor unless the decree-holder agrees to an amendment of the decree in accordance with the provisions of this Act.

(2) A decree amended under the provisions of sub-section (1) shall be deemed to bear the date of the original decree.

(3) In amending a decree under the provisions of this section the court shall accept the findings on which the decree was based except in so far as they are inconsistent with the provisions of section 9.

counting
and determi-
nation of the
amount due.

9. (1) In a suit to which this Act applies or in amending a decree under the provisions of section 8, the court shall, notwithstanding anything to the contrary in any law, decree or contract or in any agreement purporting to close past transactions, determine the principal and take into account all sums paid by or on behalf of the debtor and in the case of a mortgage with possession, the net profits realized by the mortgagee or which with the exercise of ordinary diligence might have been realized by him, and shall determine the amount, if any, due by the debtor in accordance with the provisions of the following sub-sections :

Provided that for the purposes of determining the principal, the court shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract in the course of the transaction made before the first day of January, 1917, but shall treat as interest any accumulated interest which has been converted as aforesaid at any such statement, settlement or contract made on or after that date.

(2) The amount due by the debtor shall not exceed the amount that would have been due if the rate of interest had been, in the case of a secured loan, four and a half per cent. per annum simple interest, and in the case of an unsecured loan six per cent. per annum simple interest.

(3) The amount due by the debtor as interest shall not exceed the amount of the principal outstanding on the date on which the amount due by the debtor is determined.

(4) Nothing in this section shall entitle the debtor to a refund of any sum already paid by him.

rate of inter-
est on decree.

10. (1) Notwithstanding anything contained in section 34 of the Code of Civil Procedure, 1908, the court shall not order future interest on the aggregate sum adjudged in a decree to which this Act applies or in a decree amended under the provisions of this Act, at a rate exceeding three per cent. per annum simple interest.

(2) If in a decree to be amended under the provisions of this Act a higher rate of future interest has been allowed by the court passing the decree such rate shall, with effect

V of 1908.

The U. P. Debt Redemption Act, 1940

[U. P. ACT XIII OF]

from the date of the decree, be reduced to a rate permitted by the provisions of sub-section (1) and the decree shall be amended accordingly.

(3) When a decree is executed by the grant of a mortgage under the second proviso to sub-section (1) of section 17, then, notwithstanding a different rate in the decree, the rate of interest shall from the date when such mortgage is granted, be deemed to be three per cent. per annum.

Apportionment of loan

11. In any proceeding relating to a loan due jointly from several persons any of whom is an agriculturist or a workman the court shall apportion the loan between the joint debtors and the provisions of this Act shall apply only to that part of the loan which is apportioned to the joint debtor who is an agriculturist or a workman.

Suits against sureties.

12. Nothing in this Act shall prevent the institution of a suit for the recovery of a loan against a surety jointly with the debtor or separately, as the case may be, but no decree shall be passed in such suit against a surety for an amount in excess of that for which a decree would have been passed against the agriculturist or workman from whom the loan is recoverable.

CHAPTER III

EXECUTION OF DECREES

Exemptions and extensions.

13. (1) The provisions of this chapter shall not apply to the execution of a decree based on a loan advanced by a bank.

(2) The provisions of sections 16 and 17 shall not apply to the hill pattis of the Kumaun Division.

(3) In areas to which the Bundelkhand Alienation of Land Act, 1903, extends the provisions of sections 16 to *18 shall not apply to the land of a member of a tribe which by virtue of a notification issued under section 4 of that Act is deemed to be an agricultural tribe for the purposes of that Act : U. P. II 1903.

*Provided that in such areas a member of such tribe who has made an application under section 4 of the United Provinces Encumbered Estates Act, 1934, shall notwithstanding the provisions of section 39 of that Act, be entitled to the benefit of section 19 as if this sub-section did not bar the application of the provisions of section 17 to his land.

(4) For the purposes of sections 16 to 19 the expressions "agriculturist", "loan" and "decree to which this Act applies" shall be interpreted as if the first proviso to sub-section (3) of section 2 were omitted.

Attachment of agricultural produce restricted.

14. Notwithstanding anything in the Code of Civil Procedure, 1908, not more than one-third of the agricultural produce of a judgment-debtor shall be liable to attachment in execution of any decree or decrees to which this Act applies. V of 1.

* See U. P. Debt Redemption (Amendment) Act, 1941.

The U. P. Debt Redemption Act, 1940

[U. P. ACT XIII OF 1940]

imitation
or execution
of decree
against agri-
cultural pro-
duce.

15. (1) Notwithstanding anything in the Code of Civil Procedure, 1908, no order shall be made for the execution of a decree to which this Act applies against the agricultural produce of a judgment-debtor after the expiration of six years, in the case of such decrees passed before the commencement of this Act, from the date of such commencement, and in the case of such decrees passed after the commencement of this Act, from the date of the decree, or where the decree directs any payment of money to be made at a certain date or at recurring intervals, from the date of default in making the payment in respect of which the decree-holder seeks to execute the decree :

V of 1908.

Provided that nothing in this sub-section shall be deemed to authorize the execution of a decree to which this Act applies against the agricultural produce of a judgment-debtor if such execution would have been barred by the provisions of section 6 of the United Provinces' Agriculturist's Relief Act, 1934, had the said section been in force at the date of such execution.

U. P. XXVII
of 1934

(2) Nothing in this section shall be deemed to extend the period of limitation for an application for the execution of a decree.

execution
decree
against land.

16. (1) Notwithstanding anything in the Code of Civil Procedure, 1908, when the land of an agriculturist is sought to be sold in execution of a decree to which this Act applies the court executing the decree shall proceed in accordance with the provisions of the following sub-sections :

V of 1908

Provided that if at any time before such land is transferred in accordance with the provisions of this section, such agriculturist applies in writing to the court executing the decree stating that he desires to have the land put to sale the court shall sell it in accordance with the provisions of the Code of Civil Procedure, 1908.

V of 1908.

(2) Where such decree is based on a loan made before the first day of January, 1931, or where it is based on a series of transactions any of which took place before that date, the court shall, in accordance with rules made by the Provincial Government, determine the annual value of such land in the agricultural year 1337 Fasli and in the agricultural year in which the decree is sought to be executed by sale and shall calculate the value of such land by multiplying whichever of these annual values is the greater by the prescribed multiple.

(3) In the case of any other decree to which this Act applies the court shall in accordance with rules made by the Provincial Government determine the annual value of such land in the year in which the decree is sought to be executed by sale and shall calculate the value of such land by multiplying the annual value by the prescribed multiple.

(4) If the value so determined is less than or equal to the amount of such decree together with the proportionate amount of any prior encumbrance, the court shall transfer such land to the decree-holder.

The U. P. Debt Redemption Act, 1940

[C. P. Act XIII of 1

(5) If the value so determined is greater than the amount of such decree together with the proportionate amount of any prior encumbrance, the court shall determine the portion of such land the value of which determined in accordance with the provisions of sub section (2) or sub-section (3), is equal to the amount of the decree together with the proportionate amount of such prior encumbrance and shall transfer such portion to the decree-holder.

(6) When land is transferred under the provisions of this section the decree shall be deemed to be satisfied up to the value of such land as determined under the provisions of this section and all the rights of the agriculturist in such land shall be deemed to have been sold to the decree-holder.

Protection
of certain
land from
sale or
transfer.

17. (1) Notwithstanding anything contained in section 16 or in any other law for the time being in force—

(a) the land of an agriculturist, the local rate payable by whom or recoverable from whom does not exceed twenty-five rupees per annum, shall not be sold or otherwise transferred in execution of a decree to which this Act applies, nor shall a final decree for foreclosure be passed in respect of such land, and

(b) in the case of any other agriculturist—

(i) only so much of his land may be sold or otherwise transferred in execution of a decree to which this Act applies ; or

(ii) a final decree for foreclosure may be passed in respect of only so much of his land, as would, after such sale or transfer or foreclosure leave with him and the local rate payable in respect of which would be at least rupees twenty-five per annum :

Provided that in the permanently settled areas of the Benares Division and the Azamgarh District the local rate on the agriculturist's land shall, for the purposes of this section, be deemed to be twice the local rate actually payable on it :

¹[Provided further that in Audh the local rate recoverable from an under-proprietor shall, for the purposes of this section, be deemed to be the local rate payable by the superior proprietor in respect of the land held by the under-proprietor as such.]

Provided ²[also] that the court may execute a decree to which this Act applies by granting to the decree-holder a self-liquidating usufructuary mortgage, for a period of not more than twenty years, of such land as is protected from sale, transfer or foreclosure by the provisions of this section :

¹ Ins. by sec. 3 of U.P. Act VI of 1942.

² Sub. for "further" by sec. 3 of U.P. Act VI of 1942.

The U. P. Debt Redemption Act, 1940

[U. P. Act XIII of 1940]

Provided also that when a mortgage has been granted under the provisions of this section the same land shall not be mortgaged in execution of any other decree to which this Act applies against the same debtor or his heir or successor if the term of the mortgage together with the term or terms of the previous mortgage or mortgages exceed twenty years.

(2) The form, terms and conditions of a mortgage granted under the second proviso to sub-section (1) and the amount to be paid by the debtor at any time for the redemption of such mortgage shall be such as may be prescribed.

Procedure
where
several
decrees are
executed
simultane-
ously.

18. Where several persons holding decrees to which this Act applies move the court, before it has granted a mortgage under section 17, for execution of their decrees by grant of a mortgage of land protected under that section, the court shall, subject to the provisions of that section, observe the following principles in executing the decrees :

- (a) If any such decree is based on a loan the payment of which is already secured by a mortgage of the whole or part of the land so protected (hereinafter described as a secured decree) the holder of such decree shall first be granted a mortgage of the protected land already mortgaged to him, and the holder of a decree based on an unsecured loan (hereinafter described as an unsecured decree) shall be granted a mortgage of the remaining protected land, if any.
- (b) Where there are more than one secured decrees and also unsecured decrees—
 - (i) and different portions of the protected land are mortgaged in the secured decrees, the holder of each such decree shall be granted a mortgage of the portion which is already mortgaged to him ;
 - (ii) and the same protected land is mortgaged in more than one decree, mortgages shall be granted to the holders of such decrees in order of their priority ;
 - (iii) and if after the grant of mortgages under sub-clauses (i) and (ii) there remains any protected land free from such mortgages, the holders of the unsecured decrees shall be granted mortgages thereof.
- (c) As among persons holding unsecured decrees such persons shall each be granted simultaneously mortgages of rateable shares of the land in such manner as may be prescribed.

Application
to U.P.
Encumbered
Estates
Act, 1934.

19. The land of an agriculturist which by the provisions of clauses (a) and (b) of sub-section (1) of section 17, would be protected from sale in execution of a decree to which this Act applies shall in proceedings under the United Provinces Encumbered Estates Act, 1934, be deemed to be protected land as defined in that Act.

U.P. XXV
of 1934

The U. P. Debt Redemption Act, 1940

[U.P. Act XIII of 1940]

Court to grant certificate of transfer or mortgage in cases of transfer or mortgage as the case may be of debtor's property in execution of decrees.

20. (1) When land is transferred in accordance with the provisions of section 16 such transfer shall for the purposes of section 89 of the Indian Registration Act, 1908, be deemed to be a sale of immoveable property. The court shall grant a certificate of transfer for which the decree-holder shall pay stamp duty according to the valuation of the land so transferred.

(2) When a decree is executed by the grant of a mortgage under the provisions of the second proviso to sub-section (1) of section 17, the court shall grant a certificate of mortgage with such particulars as may be prescribed and shall follow the procedure laid down in sub-section XVI of (2) of section 89 of the Indian Registration Act, 1908, as if such certificate was a certificate of sale of immoveable property and the registering officer shall file the copy of the certificate in his Book No. 1. Such certificate of mortgage shall be exempt from stamp duty.

Decree on the basis of a first mortgage to be satisfied by the sale of mortgaged property.

21. Notwithstanding anything contained in rule 6 or rule 8-A of Order XXXIV of the First Schedule of the Code of Civil Procedure, 1908, where in a suit based on a loan secured by a first mortgage a decree for sale has been executed and the net proceeds of the sale of the mortgaged property are found insufficient to pay the amount due to the plaintiff or to the defendant, as the case may be, no decree shall be passed for the balance due to such plaintiff or defendant, as the case may be, and if any decree for such balance has been passed before the commencement of this Act, it shall be deemed to have been satisfied.

Fees protected from sale

22. No decree to which this Act applies shall be executed by the transfer of trees belonging to an agriculturist unless the land on which such trees stand is also transferred:

Provided that nothing in this section shall be deemed to prohibit the execution of a decree by the sale of the interest of a grove-holder.

Decrees not to be executed by arrest and detention of judgment-debtor.

23. No decree to which this Act applies shall be executed by the arrest and detention of the judgment-debtor unless the court is satisfied that such debtor has alienated or removed or concealed any of his property with the intention to defeat or delay the execution of such decree.

CHAPTER IV

MISCELLANEOUS

Application of the Code of Civil Procedure, 1908

24. The provisions of the Code of Civil Procedure, 1908, save in so far as they are inconsistent with the provisions of this Act, shall apply to all proceedings under this Act.

Jurisdiction of panchayat barred.

25. (1) Notwithstanding anything in the United Provinces Village Panchayat Act, 1920, no suit to which this Act applies shall be instituted before a panchayat established under the provisions of that Act and if at the commencement of this Act any such suit is pending before a panchayat so established, it shall forthwith be transferred to the court which, but for such panchayat, would have jurisdiction.

(2) The provisions of section 8 shall apply to decrees passed by a panchayat so established as if for the words

U.P. VI

1920.

The U. P. Debt Redemption Act, 1940

[U. P. Act XIII of 1940]

“civil court which passed the decree or to which the execution of the decree has been transferred”, in that section the words “court of the tahsildar” were substituted.

to
make rules **26.** The Provincial Government may make rules consistent with this Act for carrying out the purposes of this Act.

repeals
and amendments. **27. (1)** The enactments mentioned in the Second Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

(2) In section 33 of the United Provinces Agriculturist's Relief Act, 1934—

U.P. XXVII
of 1934.

(a) in sub-section (2) for the words “follow the provisions of Chapter IV of this Act and the provisions of the Usurious Loans Act, 1918,” the words “allow only such interest as may be permissible under the law applicable to the agriculturist debtor” shall be substituted; and X of 1918.

(b) sub-section (4) shall be omitted.

THE FIRST SCHEDULE

[See *sub-section (20) of Section 2*]

Agricultural labourers, bangle-makers, barbers, basket-makers, blacksmiths, boatmen, carders, carpenters, copper-smiths, cowherds, dairymen, fishers, general labourers, goat herds, hunters, leather-workers, masons, midwives, potters, scavengers, stone-cutters, tailors, tanners, washermen, watchmen, water-carriers, weavers or other servants of the village community; or any similar class of persons which the Provincial Government may, by notification in the official *Gazette*, from time to time, include in this Schedule.

THE SECOND SCHEDULE

[See *section 27*]

Year	No.	Short title	Extent of repeal
1934	XXVII	The United Provinces Agriculturist's Relief Act, 1934.	(a) Sections 3 to 8 to 42, and Schedule I to Schedule V, except in their application to advances made before the first day of June, 1940 not being loans as defined in this Act.

The U. P. Debt Redemption Act, 1940

[U. P. Act XIII of 1940]

1	2	3	4
			(b) Sections 9 to 27, except in their application to mortgages made before the commencement of this Act.
1937	X	The United Provinces Temporary Postponement of Execution of Decrees Act, 1937.	The whole.

THE BENGAL MONEY-LENDERS ACT, 1940

Bengal Act X of 1940

An Act further to regulate transactions of money lending in Bengal.

WHEREAS it is expedient to make further and better provision for the control of money-lenders and for the regulation and control of money-lending :

It is hereby enacted as follows :—

CHAPTER I

INTRODUCTORY.

1. (1) This Act may be called the Bengal Money-lender Act, 1940.

short title,
extent and
commence-
ment.

(2) It extends to the whole of Bengal.

(3) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

definitions.

(1) “ bank ” means a banking company as defined in section 277F of the Indian Companies Act, 1913, whether incorporated in or outside British India ;

(2) “ borrower ” means a person to whom a loan is advanced and includes a successor-in-interest or surety ;

(3) “ Calcutta ” means the area within the limits of the ordinary original civil jurisdiction of the High Court in Calcutta ;

(4) “ commercial loan ” means a loan advanced to any person to be used by such person solely for the purposes of any business or concern relating to trade, commerce, industry, mining, planting, insurance, transport, banking or entertainment, or to the occupation of wharfinger, warehouseman or contractor or any other venture of a mercantile nature, whether as proprietor or principal or agent or guarantor ;

Explanation.—Notwithstanding anything contained in any agreement relating thereto, a loan shall not be deemed to be a commercial loan unless it is in substance a loan to be used solely for any of the purposes referred to in this clause.

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

- (5) “co-operative life insurance society”, “mutual insurance company” and “provident society” have the same meaning as in the Insurance Act, IV of 1938 1938 ;
- (6) “co-operative society” means a society registered under the Co-operative Societies Act, 1912, or any II of 1912 Act of the Provincial Legislature, for the time being in force, relating to such societies ;
- (7) “insurance company” means—
- (a) in relation to any loan advanced before the commencement of the Insurance Act, 1938, IV of 1938 an insurance company within the meaning of the Indian Insurance Companies Act, 1928, XX of 1928 and
 - (b) in relation to any loan advanced after the commencement of the Insurance Act, 1938, IV of 1938 an insurance company within the meaning of that Act ;
- (8) “interest” includes any sum by whatsoever name called, in excess of the principal paid or payable to a lender in consideration of, or otherwise in respect of, a loan whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a lender in accordance with the provisions of this Act or any other law for the time being in force for or on account of costs, charges or expenses ;
- (9) “lender” means a person who advances a loan and includes a money-lender ;
- (10) “licence” means a licence granted under this Act ;
- (11) “life assurance company” has the same meaning as in the Indian Life Assurance Companies Act, 1912 ; VI of 1912
- (12) “loan” means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include—
- (a) a deposit of money or other property,
 - (b) a loan to, or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860, or under any other XXI of 18 law relating to public, religious or charitable objects ;
 - (c) a loan taken or advanced by any Government in British India or by any local authority in Bengal ;
 - (d) a loan advanced before or after the commencement of this Act—
 - (i) by a bank which was a scheduled bank on the first day of January, 1939, or

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

by a bank which has been declared to be a notified bank under section 3, whether or not such bank was a scheduled bank or was so declared to be a notified bank, as the case may be, at the time the loan was advanced ; or

(ii) by a co-operative life insurance society, co-operative society, insurance company, life assurance company, mutual insurance company, provident insurance society or provident society or from a provident fund ;

(e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ;

XXVI of 1881.

(f) a commercial loan ;

(g) a loan advanced to any person for the purchase or construction of a house or for the construction of a house together with the purchase of the site thereof, within the limits of the area defined by clause (11) of section 3 of the Calcutta Municipal Act, 1923, or of any area which has been or may hereafter be constituted a municipality under the provisions of the Bengal Municipal Act, 1923, if such loan is subject to the condition of repayment by instalments extending over a period of ten years or more ;

Ben. Act. III of 1923.

Ben. Act XV of 1923.

(h) a loan made to or by the Administrator-General and Official Trustee of Bengal or the Commissioner of Wakfs or the Official Assignee or the Official Receiver of the High Court in Calcutta ;

(i) a loan or debenture in respect of which dealings are listed on any Stock Exchange ;

(13) “ money-lender ” means a person who carries on the business of money-lending in Bengal or who has a place of such business in Bengal, and includes a pawnee as defined in section 172 of the Indian Contract Act, 1872 ;

IX of 1872

(14) “ money-lending business ” and “ business of money-lending ” mean the business of advancing loans either solely or in conjunction with any other business ;

(15) “ prescribed ” means prescribed by rules made under this Act ;

(16) “ principal ” means in relation to a loan the amount actually advanced to the borrower ;

(17) “ provident fund ” has the same meaning as in the Provident Funds Act, 1925 ;

XIX of 1925.

(18) “ provident insurance society ” means a society registered under the Provident Insurance Societies Act, 1912 ;

V of 1912

(19) “ register ” means a register of money-lenders maintained under section, 7 ;

(20) “ Scheduled bank ” has the same meaning as in the Reserve Bank of India Act, 1934 ;

II of 1934.

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

II of 1940

- (21) "suit" includes an appeal ;
- (22) "suit to which this Act applies" means any suit or proceeding instituted or filed on or after the 1st day of January, 1939, or pending on that date and includes a proceeding in execution—
- (a) for the recovery of a loan advanced before or after the commencement of this Act ;
 - (b) for the enforcement of any agreement entered into before or after the commencement of this Act, whether by way of settlement of account or otherwise, or of any security so taken, in respect of any loan advanced whether before or after the commencement of this Act ; or
 - (c) for the redemption of any security given before or after the commencement of this Act in respect of any loan advanced whether before or after the commencement of this Act.

Notified banks.

3. The Provincial Government may, by notification in the *Official Gazette*, declare any bank to be a notified bank for the purposes of this Act :

Provided that no bank shall be so declared to be a notified bank unless it complies with such conditions as may, with the approval of the Provincial Legislature, be prescribed.

CHAPTER II

COMPETENT COURTS AND PROCEDURE

Competent Courts under this Act.

4. Notwithstanding anything contained in any other law, the Courts (hereinafter referred to as Competent Courts) which have jurisdiction to entertain proceedings under sections 16 and 19 and to pass orders therein are the Courts hereinafter specified, within the local limits of whose jurisdiction the money-lender actually and voluntarily resides or carries on the business of money-lending—

- (a) in Calcutta, the Court of Small Causes of Calcutta ;
- (b) outside Calcutta, the Court of the District Judge (hereinafter called a "District Court") and any Court to which he may transfer the proceedings.

Procedure in Competent Courts.

5. (1) Subject to the provisions of this Act, a Competent Court shall, in proceedings under section 19, have the same powers and shall follow the same procedure as it has and follows in civil suits, and the provisions of section 24 of the Code of Civil Procedure, 1908, shall apply to such proceedings. V of 19

(2) Every order made by a Competent Court under this Act shall be subject to appeal in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals. V of 19

(3) An appeal from a decision made by the Court of Small Causes of Calcutta under this Act shall lie to the High Court as if it were an appeal under sub-section (2) to the High Court from a decision made by a District Court.

CHAPTER III.

REGISTRATION AND LICENSING OF MONEY-LENDERS.

int
of Pro-
al and
Regis- 6. There shall be a Provincial Registrar for the purposes in this Act and as many Registrars and Sub-Registrars of money-lenders for assisting the Registrar as the Provincial Government may from time to time determine. The Provincial Government may define, by notification in the *Official Gazette*, the area within which each such officer shall exercise his powers and perform his duties and may prescribe the control which shall be exercised by the Provincial Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars :

Provided that no person who is not a servant of the crown in India shall be empowered to act as a Provincial registrar, Registrar or Sub-Registrar under this Act.

ter of
7-len- 7. Each Sub-Registrar shall maintain in the prescribed form a register of money-lenders holding licences issued by him.

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business
to be
d on
t under
3. 8. After such date not less than six months after the commencement of this Act as the Provincial Government shall, by notification in the *Official Gazette*, appoint in this behalf, no money-lender shall carry on the business of money-lending unless he holds an effective licence.

Explanation.—An effective licence for the purposes of this Act comprises a licence issued to a person who is not disqualified for holding a licence.

ses. 9. (1) A licence shall be valid throughout the whole of Bengal for a period of three years from the date of its issue or until it is cancelled.

(2) On the expiration of the period for which the licence was granted or on the cancellation of a licence it shall be returned by the money-lender to the Sub-Registrar who issued it.

e fee. 10. There shall be paid to the Provincial Government a fee of fifteen rupees for a licence issued under this Act :

Provided that the Provincial Government may, by notification in the *Official Gazette*, remit any part of such fee either generally or for any particular class of money-lenders.

ation
nces. 11. An application for the grant of a licence shall be made in the prescribed form and manner to the Sub-Registrar within the local limits of whose jurisdiction the money-lender has a place of money-lending business and shall contain such particulars as may be prescribed.

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r and
of
s. 12. On receipt of an application under section 11 and on payment in the prescribed manner of the licence fee specified in section 10, the Sub-Registrar shall, subject to the provisions of section 16, enter the name of the applicant in the register and grant the applicant a licence in such form as may be prescribed.

The Bengal Money-lenders Act of 1940

[BEN. ACT X OF 1940]

Stay of suit
when
money-
lender does
not hold
licence.

13. (1) No Court shall pass a decree or order in favour of a money-lender in any suit instituted by a money-lender for the recovery of a loan advanced after the date notified under section 8, or in any suit instituted by a money-lender for the enforcement of an agreement entered into or security taken, or for the recovery of any security given, in respect of such loan, unless the Court is satisfied that, at the time or times when the loan or any part thereof was advanced, the money-lender held an effective licence.

(2) If during the trial of a suit to which sub-section (1) applies, the Court finds that the money-lender did not hold such licence, the Court shall, before proceeding with the suit, require the money-lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fee specified in section 10.

(3) If the money-lender fails to pay the penalty within the period fixed under sub-section (2) or within such further time as the Court may allow, the Court shall dismiss the suit : if the money-lender pays the penalty within such period, the Court shall proceed with the suit.

(4) The provisions of this section shall apply to a claim for a set-off by or on behalf of a money-lender.

(5) In this section, the expression " money-lender " includes an assignee of a money-lender, if the Court is satisfied that the assignment was made for the purposes of avoiding the payment of licence fee and penalty which may be ordered to be paid under this section.

Disqualifica-
tion of
persons for
holding a
licence.

14. (1) A person shall be disqualified for holding a licence—

(a) if so ordered by a Court under section 20, for the period ordered ;

(b) if he has been convicted of any offence specified in the Schedule to this Act and if such conviction has not been set aside by any Court of appeal or revision under any law for the time being in force.

(2) The Provincial Government may, at any time, on application in the prescribed form accompanied by the prescribed fee, remove a disqualification referred to in sub-section (1), having regard to the time which has elapsed since the order and the circumstances under which it was made or to the time which has elapsed since the conviction and to the nature of the offence.

Proof of
conviction
or order for
disqualifica-
tion.

15. Where it is required to be proved for the purposes of this Act that any person has been convicted of an offence specified in the Schedule to this Act or has been disqualified by an order of a Court for holding a licence, such conviction or order may be proved, in addition to any other mode provided by any law for the time being in force—

(a) by an extract certified under the signature of the officer having the custody of the records of the Court in which such conviction was had, or such order was passed, to be a copy of the sentence or order, or

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[BEN. ACT X OF 1940]

- (b) in the case of a conviction, by a certificate signed by the officer in charge of the jail, in which the punishment or any part thereof was undergone, or by the production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the person so convicted or in respect of whom such order was passed.

sal to **16. (1)** The grant of a licence shall not be refused except on one or more of the following grounds, namely :—

e.

- (a) that the applicant has not complied with the provisions of this Act or of the rules made thereunder in respect of an application for the grant of a licence ;

- (b) that the applicant or any person responsible or proposed to be responsible for the management of the applicant's money-lending business is under this Act disqualified for holding a licence.

- (2) A Sub-Registrar refusing a licence—

- (i) under clause (a) of sub-section (1) shall record his reasons for such refusal ;

- (ii) under clause (b) of sub-section (1) shall record the evidence of the disqualification.

(3) An appeal from the orders of a Sub-Registrar refusing a licence shall, if made within thirty days from the date of such order, lie to a Registrar authorised under section 6 to hear such appeal.

(4) A Registrar referred to in sub-section (3) may decide, if such appeal is allowed, as to the Sub-Registrar to whom application for a licence shall be made and his decision shall, subject to the provisions of sub-section (5), be final for all purposes, and shall be binding on such Sub-Registrar whether he be under the control of such Registrar or not.

(5) A Competent Court may, on application made within ninety days from the date of the decision of the Registrar in appeal under sub-section (3), revise such decision.

(6) The procedure to be followed by a Competent Court or by a Registrar in proceedings under this section shall be in accordance with rules prescribed under this Act

(7) The provisions of sections 4, 5 and 12 of the Indian Limitation Act, 1908, shall apply to all appeals and applications for revision made under this section, and for the purposes of the said sections a Registrar shall be deemed to be a Court. **IX of 1908**

disqualification
once by
Registrar.

17. Any Sub-Registrar may, after giving the money-lender to whom a licence entered in the register maintained by such Sub-Registrar was issued an opportunity of being heard, cancel the licence if it is proved that such money-lender was disqualified for holding a licence at the time when such licence was issued ; and thereupon the provisions of clause (ii) of sub-section (2) and of sub-sections (3), (4), (5), (6) and (7) of section 16 shall apply.

Power to Registrar and Sub-Registrar to examine any person on oath. 18. For the purposes of an inquiry under this Act relating to a disqualification for holding a licence a Registrar or a Sub-Registrar shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him on oath. V of 1908

Application for cancellation of licence. 19. Any borrower, may, in respect of any money-lender from whom he has taken a loan, make an application to a Competent Court for an order under section 20 on the ground that such money-lender has committed such contravention of the provisions of this Act or the rules made thereunder as render him unfit to carry on the business of money-lending, and on receipt of such application, the said Court shall hold such inquiry as it deems necessary.

Courts power to cancel a licence. 20. (1) A Competent Court on an application under section 19 or a Court trying a suit to which this Act applies or a Court passing an order of conviction upon a money-lender for an offence under this Act, if satisfied that the money-lender has committed such contravention of the provisions of this Act or of the rules made thereunder as, in its opinion, makes him unfit to carry on the business of money-lending—

- (a) shall cause the particulars of the conviction, if any, and of any order passed by the Court under this sub-section to be endorsed on the licence held by the money-lender or by any other person affected by such order ; and
- (b) may declare such money-lender or any person responsible for the management of his money-lending business or both disqualified for holding a licence for such period as the Court may think fit and shall cancel and impound the licence held by the money-lender :

Provided that, except in the case of an order passed by a District Court, or by the Court of an Additional District Judge or by the Court of Small Causes of Calcutta, the period of disqualification shall not exceed one year.

(2) If a Court other than a District Court, or the Court of an Additional District Judge or the Court of Small Causes of Calcutta is of opinion that a period of disqualification exceeding one year should be imposed, it shall record its opinion and forward the proceedings to the District Court having jurisdiction in the place where such Court is held.

(3) The District Court to which such proceedings are submitted may, if it thinks fit, examine the parties and recall and examine any person who has already given evidence in the proceedings, and may call for and take any further evidence, and shall pass such order in the case as it thinks fit in accordance with the provisions of sub-section (1).

(4) Any person aggrieved by the decision of a Court under this section may appeal against such order, in the case of the Court of Small Causes of Calcutta to the High Court and in the case of any other Court to the Court to which an

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[BEN. ACT X OF 1940]

appeal ordinarily lies from the decision of the Court passing the order ; and the Court which passed the order or the Court of appeal may, if it thinks fit, stay the operation of the order under this section pending the disposal of the appeal :

Provided that where the Court of appeal sets aside or varies an order passed under this section, it shall order that any endorsements made in pursuance thereof upon a licence held by a money-lender shall be erased or modified.

(5) The substance of any order passed under sub-section (1), sub-section (3) or sub-section (4) shall be sent forthwith in the prescribed form by the Court passing the order to the Provincial Registrar and also together with the cancelled licence to the Sub-Registrar who maintains the register in which the licence affected has been entered for entry in the said register and for such circulation of the substance of the said order to other Registrars as may be prescribed.

(6) Any licence required by a Court for endorsement under sub-section (1) shall be produced in such manner and at such time as the Court may direct by the person by whom it is held, and any person who without reasonable cause makes default herein shall be liable on conviction to a fine not exceeding fifty rupees for each day of the period during which the default continues.

(7) The powers conferred on a Court under sub-section (1) may be exercised by a Court in appeal or in revision.

compens-
on for can-
lation of
ence.
21. A person whose licence has been cancelled shall not be entitled to any compensation on such account nor to the refund of any licence fee paid in respect of such licence.

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22. All licence fees and all penalties imposed under this Act shall be recoverable as public demands.

fences in
spect of li-
ices.
23. (1) Whoever being disqualified for holding a licence, applies for or obtains a licence during the pendency of such disqualification, without disclosing the fact thereof, shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both, and any licence so obtained shall not be deemed to be an effective licence.

(2) Whoever obliterates or causes to be obliterated or attempts to obliterate an endorsement entered on a licence under this Act or abets such obliteration or attempt shall be punishable, on conviction, with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

CHAPTER IV

REGULATIONS OF ACCOUNTS OF MONEY-LENDERS.

ity of mo-
y-lender to
p account.
24. (1) Every money-lender shall keep and maintain at least a cash book, a ledger and a receipt book in such form or forms as may be prescribed, and the same shall be written in Bengali or English in the regular course of business.

(2) Every money-lender shall—

- (a) deliver to the borrower at the time a loan is advanced a statement in Bengali or English as the borrower may desire, in such form as may be prescribed and showing such details of the conditions of the loan and such other information connected therewith as may be prescribed ;
- (b) give to the borrower a plain and complete receipt for every payment made on account of any loan at the time of such payment ;
- (c) upon repayment in full of a loan mark indelibly with words indicating full payment or cancellation every paper signed by the borrower, and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in sub-section (1) shall, if certified in such manner as may be prescribed, be admissible as evidence of the contents of such account. I of 187.

Money-lenders to furnish statements of accounts.

25. (1) Every money-lender shall, within two months of the commencement of each year, furnish each of his borrowers with a legible statement of accounts in Bengali or English as the borrower may desire signed by the money-lender or his agent and showing the amount outstanding against the borrower : such statement shall be in the prescribed form and shall show—

- (a) the amounts of principal and interest due to the money-lender at the commencement of the year ;
- (b) the amounts of any sums advanced to the borrower from time to time since the commencement of the year and the dates on which they were advanced ;
- (c) the amounts of any payments received from the borrower since the commencement of the year in respect of loans outstanding and the dates on which they were received ;
- (d) the amount of every sum due from the borrower remaining unpaid and the date on which each such sum became due and the amount of interest accrued due and unpaid in respect of every such sum ;
- (e) the amount of every sum not yet due which remains outstanding and the date upon which each such sum will become due ; and
- (f) such other particulars as may be prescribed.

(2) In respect of any particular loan, whether advanced before or after the commencement of this Act, a money-lender shall, on demand being made in writing by the borrower at any time while the loan or any portion thereof remains outstanding, supply to the borrower or to any person specified in that behalf in the demand, within thirty days from

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the date of receipt of the written demand by the money-lender or his duly authorised agent, a statement in Bengali or English as the borrower may desire, signed by the money-lender or his agent and showing in the prescribed form any or all of the particulars specified in sub-section (1) :

Provided that the money-lender shall not be bound to comply with such demand if he has complied with a demand made not more than six months prior to the date thereof, or if within such period of six months he has furnished the statement required by sub-section (1).

(3) A money-lender shall, on a demand in writing by the borrower, supply to the borrower or any person specified in that behalf in the demand a copy of any document evidencing an agreement to secure repayment of a loan advanced to the borrower :

Provided that a money-lender shall not be bound to comply with such a demand if he has previously furnished the borrower with such copy, except on payment of such fee as may be prescribed.

(4) In this section the expression “ year ” means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

26. A borrower to whom a statement of accounts has been furnished under section 25 shall not be bound to acknowledge or deny its correctness, and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

27. Notwithstanding anything contained in any law in force for the time being in force, in any suit to which this Act applies—

(a) a Court shall before deciding the claim on its merits, frame and decide the issue whether the money-lender has in respect of the claim in suit complied with the provisions of sections 24 and 25 ; and

(b) if the Court finds that the provisions of either of the said sections have not been so complied with, it may, if the plaintiff's claim is established either wholly or in part, disallow the whole or such portion of the interest found due as may, in the circumstances of the case, appear reasonable to the Court, and may also disallow costs, or in computing the amount of interest due upon the loan, the Court may exclude any period for which the money-lender omitted to comply with the provisions of either of the said sections :

Provided that if the money-lender has, after the times specified in the said sections, given the receipt or furnished the statement, as the case may be, and if he satisfies the Court that he had sufficient cause for not doing so earlier, the Court may include any such period in computing the interest.

Explanation.—A money-lender who has given a receipt or furnished a statement in the prescribed form shall be held to have complied with the provisions of section 24 or section 25, as the case may be, in spite of any errors and omissions in such receipt or statement, if the Court finds that such errors and omissions are neither material nor made fraudulently.

CHAPTER V

ASSIGNMENT OF LOANS

Notice and information to be given on assignment of loans by lender

28. (1) Where any debt in respect of—

- (i) a loan advanced by a lender, whether before or after the commencement of this Act, or
- (ii) interest on any such debt, or
- (iii) the benefit of any agreement made, or security taken, in respect of any such debt or interest,

is assigned to any person, the assignor (whether he is the lender by whom the loan was advanced or any person to whom the debt has been previously assigned) shall, before the assignment is made,—

- (a) give to the assignee notice in writing that the debt, interest thereon, agreement or security is affected by the operation of this Act, and
- (b) where the debt is in respect of a loan advanced by a money-lender, supply to the assignee in such form as may be prescribed all information as to the state of the loan together with copies of document relating thereto.

(2) Any person who acts in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall also be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

(3) In this section the expression “assigned” means assigned by an assignment *inter vivos* other than an assignment by operation of law; and the expressions “assignor” and “assignee” have corresponding meanings.

Application of Act as respects assignees

29. (1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt due to a lender or money-lender in respect of loans advanced by him after the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid:

Provided that, notwithstanding anything contained in this Act—

- (a) any agreement with, or security taken by, a lender or money-lender in respect of a loan advanced by

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him ; and

- (b) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid ;

but in every such case the lender or money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings instituted by, an assignee or holder for value who is himself a money-lender.

(2) The provisions of this Act shall apply and be deemed always to have applied and shall continue to apply as respects any debt due to a lender or money-lender in respect of loans advanced by him before the commencement of this Act or in respect of interest on such loans or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and except where the context otherwise requires, references in this Act to a lender or money-lender shall accordingly be construed as including any such assignee as aforesaid.

(3) Nothing in this section shall render valid for any purpose any agreement, security or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

CHAPTER VI

INTEREST AND OTHER CHARGES

Limitation
as to amount
and rate of
interests re-
coverable.

30. Notwithstanding anything contained in any law for the time being in force, or in any agreement.

- (1) no borrower shall be liable to pay after the commencement of this Act—

(a) any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan exceeds twice the principal of the original loan,

(b) on account of interest outstanding on the date up to which such liability is computed, a sum greater than the principal outstanding on such date,

(c) interest at a rate *per annum* exceeding in the case of—

- (i) unsecured loans, ten *per centum* simple,

The Bengal Money-lender Act, 1900

[BEN. ACT X OF 1900]

(ii) secured loans, eight *per centum* simple, whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act ;

(2) no borrower shall after the commencement of this Act, be deemed to have been liable to pay before the date of such commencement in respect of interest paid before such date or included in a decree passed before such date, interest at rates *per annum* exceeding those specified in sub-clause (c) of clause (1) ;

(3) a lender shall be entitled to institute a suit at any time after the commencement of this Act in respect of a transaction to which either or both of the preceding clauses applies or apply.

Prohibition
of interest
on decretal
amount

31. Notwithstanding anything contained in any law for the time being in force, no Court shall, in any decree passed in any suit to which this Act applies—

(a) if the loan to which the decree relates was advanced before the commencement of this Act, allow any interest on the decretal amount, or

(b) if the loan to which the decree relates was advanced after the commencement of this Act, allow any interest other than interest not exceeding six *per centum per annum* on the principal sum adjudged.

Computation
of interest
on loans in
kind.

32. In the case of loans in kind, the money value of the commodity at the time when, and in the locality where, the loan was advanced shall, for the purposes of this Act, be deemed to be the principal of the loan, and in determining the amount which may, subject to the provisions of this chapter, be decreed in respect of any loan repayable in kind, the Court shall take into consideration the market value of the commodity in the said locality at the date or dates of repayment.

Prohibition
of charges
for expenses
on loans.

33. Any agreement between a lender and a borrower or intending borrower for the payment to the lender of any sum on account of costs, charges or expenses incidental or relating to the negotiations for, or the granting of, the loan or proposed loan, shall be illegal, and if any sum is paid to a lender by the borrower or intending borrower as, for on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly :

Provided that nothing in this section shall debar a lender from recovering the costs of investigating title, of stamp duty and registration of documents and other necessary and incidental expenses in cases where the agreement includes a stipulation that property is to be, given as security or by way of mortgage, or the costs of stamp duty and registration of documents in the case of unsecured loans, if both

The Bengal Money-lenders Act 1940

[BEN. ACT X OF 1940]

parties have agreed to such expenditure and the reimbursement thereof, nor from recovering such costs, charges or expenses as are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force. IV of 1882.

CHAPTER VII

MISCELLANEOUS

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34. (1) Notwithstanding anything contained in any law for the time being in force, or in any agreement, the Court shall—

- (a) in suits in respect of loans to which the provisions of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, apply, on the application V of 1908. of the defendant and after hearing the plaintiff, notwithstanding the limit of six months provided therein, direct at the time of the passing of the preliminary decree under rule 2 or rule 4 of the said Order to the effect mentioned in sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2,—
 - (i) that the payment of the amount found or declared due under sub-rule (1) of rule 2 a sub-rule (1) of rule 4 of the said Order, as the case may be, is to be made, subject to such conditions as the Court may impose in such number of annual instalments and on such dates as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant and the amount of the decree; and
 - (ii) that in default of payment of any such instalment the plaintiff shall, after giving to the defendant such notice as may be prescribed, be entitled to apply for a final decree under sub-clause (ii) of clause (c) of sub-rule (1) of the said rule 2 or under sub-rule (1) of the said rule 4, as the case may be, and the date of such default shall be deemed to be the date fixed under sub-clause (i) of clause (c) of sub-rule (1) of the said rule 2 for payment of the whole amount found or declared due under or by the preliminary decree :

Provided that nothing in this clause shall affect the power of the Court to allow extension of time under sub-rule (2) of rule 2 or sub-rule (2) of rule 4 of the said Order :

Provided further that if the defendant, after receiving the notice referred to in sub-clause (ii) and before a final decree is passed, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not pass a final decree ;

(b) in suits in respect of loans advanced before the commencement of this Act other than those referred to in clause (a)—

- (i) on the application of a defendant and after hearing the plaintiff, order at the time of the passing of the decree, or
- (ii) on the application of a judgment-debtor against whom a decree such suit has been passed whether before or after the commencement of this Act and after notice to the decree-holder, order at any time after the decree has been passed,

that the amount of the decree shall, subject to such conditions as the Court may impose, be payable without interest in such number of annual instalments, on such dates and within such period not exceeding twenty years as the Court thinks fit having regard to the circumstances of the plaintiff and the defendant or the decree-holder and the judgment-debtor and the amount of the decree, and that, if default is made in making payment of any instalment, that instalment and not the whole of the decretal amount shall be recoverable ;

(c) during the pendency of any enquiry under sub-clause (ii) of clause (b) order, subject to such conditions as the Court may impose, the stay of execution of the decree.

(2) In default of payment of any instalment referred to in clause (b) of sub-section (1), the decree-holder shall, after giving to the judgment-debtor such notice as may be prescribed, be entitled to apply for execution of the decree in respect of such instalment together with interest thereon at the rate of not more than six *per centum per annum* from the date of such default :

Provided that nothing in this sub-section shall affect the power of the Court to allow, prior to an order for execution of the decree, an extension of time of not less than one year for the payment of any instalment, and that if such extension of time is allowed, the payment of such instalment shall not be deemed to be in default :

Provided further that if the judgment-debtor, after receiving the notice referred to in this sub-section and prior to an order for execution of the decree, makes payment into Court of the amount due from him in respect of any such instalment, the payment of such instalment shall not be deemed to be in default and the Court shall not order execution of the decree.

(3) Any order made under sub-clause (ii) of clause (b) of sub-section (1) shall be deemed to have been passed under section 47 of the Code of Civil Procedure, 1908.

V of 1903.

35. Notwithstanding anything contained in any other law for the time being in force, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan shall specify only so much of the property of the judgment-debtor as the Court considers to be sale-

Sale of property in execution of decrees in respect of loans.

able at a price sufficient to satisfy the decree, and the property so specified shall not be sold at a price which is less than the price specified in such proclamation :

Provided that, if the highest amount bid for the property so specified is less than the price so specified, the Court may sell such property for such amount, if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price so specified.

Reopening
of trans-
actions

36. (1) Notwithstanding anything contained in any law for the time being in force, if in any suit to which this Act applies, or in any suit brought by a borrower for relief under this section whether heard *ex parte* or otherwise, the Court has reason to believe that the exercise of one or more of the powers under this section will give relief to the borrower, it shall exercise all or any of the following powers as it may consider appropriate, namely, shall—

- (a) reopen any transaction and take an account between the parties ;
- (b) notwithstanding any agreement, purporting to close previous dealings and to create new obligations, reopen any account already taken between the parties ;
- (c) release the borrower of all liability in excess of the limits specified in clauses (1) and (2) of section 30 ;
- (d) if anything has been paid or allowed in account on or after the first day of January, 1939, in respect of the liability referred to in clause (c), order the lender to repay any sum which the Court considers to be repayable in respect of such payment or allowance in account as aforesaid :

Provided that in the case of a loan to which the provisions of sub-section (2) of section 29 apply the lender or money-lender and each of his assignees shall be liable to repay the sum which the Court considers to be repayable in respect of and in proportion to the sum received by such lender or money-lender and such assignee ;

- (e) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the lender has parted with the security, order him to indemnify the borrower in such manner and to such extent as it may deem just ;

Provided that in the exercise of these powers the Court shall not—

- (i) reopen any adjustment or agreement, purporting to close previous dealings and to create new obligations, which has been entered into at a date than twelve years prior to the date of the suit by the parties or any person through whom they claim, or

The Bengal Money-lenders, Act. 1940

[BEN. ACT X OF 1940]

- (ii) do anything which affects any decree of a Court, other than a decree in a suit to which this Act applies which was not fully satisfied by the first day of January, 1939, or anything which affects an award made under the Bengal Agricultural Debtors Act, [1936].¹

**Ben. act, VII
of 1936.**

Explanation.—A decree shall not, for the purposes of this section, be deemed to have been fully satisfied so long as there remains undisposed of an application by the decree holder for possession of property purchased by him in execution of the decree.

(2) If in exercise of the powers conferred by sub-section (1) the Court reopens a decree, the Court—

- (a) shall, after affording the parties an opportunity of being heard, pass a new decree in accordance with the provisions of this Act, and may award to the decree holder such costs in respect of the reopened decree as it thinks fit,
- (b) shall not do anything which affects any right acquired *bona fide* by any person, other than the decree-holder, in consequence of the execution of the reopened decree,
- (c) shall order the restoration to the judgment-debtor of such property, if any, of the judgment-debtor acquired by the decree-holder in consequence of the execution of the reopened decree as may be in the possession of the decree-holder on the date on which the decree was reopened,
- (d) shall order the judgment-debtor to pay to the decree-holder, in such number of instalments as it may think fit, the whole amount of the new decree passed under clause (a), and
- (e) shall direct that, in default of the payment of any instalment ordered under clause (d), the decree-holder shall be put in possession of the property referred to in clause (c) and that the amount for which the decree-holder purchased such property in execution of the reopened decree shall be set off against so much of the amount of the new decree as remains unsatisfied.

(3) In this section the expression “suit to which this Act applies” includes a proceeding in respect of any application relating to the admission or amount of a proof of a loan advanced before or after the commencement of this Act in any insolvency proceedings.

(4) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security.

(5) Nothing in this section shall affect the rights of any assignee or holder for value if the Court is satisfied that the assignment to him was *bona fide*, and that he had not

¹ Sub. for 1935 by First Schedule no West Bengal Act VIII of 1948.

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

received the notice referred to in clause (a) of sub-section (1) of section 28.

(6) Notwithstanding anything contained in any law for the time being in force,—

- (a) the Court which, in a suit to which this Act applies, passed a decree which was not fully satisfied by the first day of January, 1939, may exercise the powers conferred by sub-sections (1) and (2)—
 - (i) in any proceedings in execution of such decree or
 - (ii) on an application for review of such decree made within one year of the date of commencement of this Act, and the provisions of rules 2 and 5 of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908, shall not apply to V of 1908. any such application ;
- (b) any Court before which an appeal is pending in respect of a decree referred to in clause (a) may either itself exercise the like powers as may be exercised under sub-sections (1) and (2), or refer the case to the Court which passed the decree directing such Court to exercise such powers, and such Court shall after exercise thereof return the record with the additional evidence, if any, taken by it and its findings and the reasons therefor to the Appellate Court and thereupon the provisions of rule 26 of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall apply,

of 1908.

37. Notwithstanding anything contained in any law for the time being in force, no Court shall order execution of a decree passed in any suit to which this Act applies by arrest and detention in prison of the judgment-debtor.

38. (1) Any borrower may make an application at any time to a Court which would have jurisdiction to entertain a suit by the lender for the recovery of the principal and interest of a loan made before or after the commencement of this Act for taking accounts and for declaring the amount due to the lender. Such application shall be in the prescribed form and shall be accompanied by a fee of one rupee, and on receipt of such application the Court shall cause a notice thereof to be served on the lender.

(2) The Court shall thereafter take an account of the transactions between the parties and shall declare the amounts if any,—

- (a) payable and already due,
- (b) payable but not yet due,

by the borrower to the lender, whether as principal or interest or both. In taking accounts under this section the Court shall follow the same procedure as it does in regard to civil suits and, so far as may be, the provisions of Chapters IV, VI and VII.

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

(3) A proceeding under this section shall be deemed to be a suit for the purposes of section 11 of the Code of Civil Procedure, 1908, and a declaration under this section shall be subject to appeal, if any, as if it were a decree of the Court, and every decision in appeal shall be subject to appeal to the High Court in the same manner as a decree passed in appeal. V of 19

Deposit in Court of money due to lender. 39. (1) Where any sum of money has been declared under sub-section (2) of section 38 to be payable by the borrower to the lender as principal or interest or both, or where a borrower has sent to a lender by postal money order any sum of money due from him to the lender in respect of a loan and the lender has refused to accept the same, the borrower may apply in the prescribed manner to the Civil Court of the lowest grade having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the lender, and the Court shall keep the said sum in deposit.

(2) The Court shall thereupon cause notice of the deposit to be served on the lender, and the lender may on presenting a petition, verified as for a plaint and stating the sum then due in respect of the loan and his willingness to accept the money so deposited, receive the sum :

Provided that in accepting any sum deposited under this section, a lender shall not be bound by any statement made by the borrower in depositing the same :

Provided also that, if the Court is satisfied that the lender has, without reasonable excuse, refused to accept any sum sent to him by postal money order by the borrower in respect of the loan, it may direct the payment to the borrower, from the money so deposited or otherwise, of such sum as damages and costs as it thinks fit.

(3) Notwithstanding any agreement between the parties, when the borrower has deposited in Court under this section any sum due in respect of the loan, if such sum is in payment of the principal or any part thereof, the interest on such principal or part shall cease from the date of the service of notice on the lender under sub-section (2).

(4) Nothing in this section shall affect the operation of sections 83 and 84 of the Transfer of Property Act, 1882, in regard to loans to which those sections apply. IV of 18

Entry of an amount in a bond, etc., different to the amount actually lent to be an offence. 40. (1) No lender shall take from a borrower or intending borrower any note, promise to pay, power of attorney, bond or security which does not state the actual amount of the loan, the rate of interest charged and the time, if any, within which the principal is stipulated to be repaid in full, or which states any of such particulars incorrectly, nor shall he take from any borrower or intending borrower any instrument in which any entry is left blank for completion at a later date.

(2) Whoever intentionally contravenes the provisions of sub-section (1) shall, on conviction, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) No money-lender shall take from any borrower or intending borrower any note, promise to pay, power of attor-

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

oy, bond or security which describes or refers to as a commercial loan any loan which is not a commercial loan.

(4) Notwithstanding anything contained in any law for the time being in force, any note, promise to pay, power of attorney, bond, security or document referred to in sub-section (1) or sub-section (3) shall be void and unenforceable.

(5) Notwithstanding anything contained in any law for the time being in force, in any suit, or proceeding the burden of proving that a loan is a commercial loan shall be on the money-lender who advanced the loan.

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estation.

41. (1) Whoever molests, or abets the molestation of, a debtor for the purpose of recovering or attempting to recover, a debt shall be punishable, on conviction, with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

Explanation.—For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing,—

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in the use thereof, or

(c) loiters or does any similar act at or near a house, building or place where such other person resides or works or receives his pay or wages or carries on business or happens to be—

shall be deemed to molest such other person :

Provided that a person who attends at or near such house, building or place for the purpose only of making a formal demand for repayment of a loan due or of obtaining or communicating information shall not be deemed to molest.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be cognisable and bailable. V of 1898.

(3) Nothing in this section shall be deemed to restrict the provisions of the Bengal Workmen's Protection Act, [1935].¹ Ben. Act
IV of 1935.

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42. (1) When any money-lender or any servant or agent of, or any person responsible for the management of the money-lending business of a money-lender knowingly and wilfully commits, authorises or permits any default in complying with, or any contravention of, any provision of this Act, if the money-lender or such servant, agent or person is—

(a) an individual, such individual, or

¹ Sub. for 1934 by First Schedule to West Bengal Act VII of 1948.

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

- (b) an undivided Hindu joint family, any member of such family who is knowingly and wilfully a party to such default or contravention, or
- (c) a body corporate, any director or officer of such body who is knowingly and wilfully a party to such default or contravention, or
- (d) an unincorporated body, any member of such body who is knowingly and wilfully a party to such default or contravention.

shall, where a specific penalty has been provided in this Act, be punishable under the provisions of this Act providing such penalty, and where no such specific penalty has been provided, be punishable on conviction—

- (i) for the first offence, with fine which may extend to two hundred rupees,
- (ii) for the second offence, with fine which may extend to five hundred rupees, and
- (iii) for any subsequent offence, with rigorous imprisonment which may extend to three months and shall also be liable to fine.

(2) No Court shall take cognizance of an offence punishable under sub-section (1) except on the complaint in writing of the Provincial Registrar or a Registrar or of a person authorised in this behalf by the Provincial Registrar or a Registrar.

(3) The Provincial Registrar may order the withdrawal of a complaint made under sub-section (2), and, if he does so, shall forward a copy of such order to the Court, and upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

(4) No Court inferior to that of a Presidency Magistrate or a Subdivisional Magistrate or a Magistrate of the first class shall try an offence punishable under sub-section (1).

Protection to persons acting under this Act.

43. No suit, prosecution or proceeding shall lie against a servant of the Crown in India for anything which is in good faith done or intended to be done under this Act.

Power to make rules.

44. (1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely :—

- (a) the conditions referred to in the proviso to section 3;
- (b) the control to be exercised by the Provincial Registrar over Registrars and Sub-Registrars and by a Registrar over Sub-Registrars ;
- (c) the form in which registers under section 7 shall be maintained;

The Bengal Money-lenders Act, 1940

[BEN. ACT X OF 1940]

- (d) the form and manner in which an application for the grant of a licence shall be made, and the particulars to be therein contained ;
- (e) the manner in which licence fees and penalties shall be paid ;
- (f) the form of licences ;
- (g) the form of, and the fee payable on, an application under sub-section (2) of section 14 ;
- (h) the procedure to be followed by a Competent Court or by a Registrar in proceedings under section 16 ;
- (i) the form in which a Court shall send the substance of the order referred to in sub-section (5) of section 20, and the method of circulation of the same to other Registrars ;
- (j) the form in which a money-lender shall maintain his cash book, ledger and receipt book ;
- (k) the form of, and the particulars to be contained in, the statement to be delivered under sub-section (2) of section 24 ;
- (l) the form of the statements to be furnished under section 25 and the fee to be paid under the proviso to sub-section (3) of that section ;
- (m) the form in which information shall be supplied to an assignee under clause (b) of sub-section (1) of section 28 ;
- (n) the form in which notice shall be given by the plaintiff to the defendant under sub-clause (ii) of clause (a) of sub-section (1) of section 34, and by the decree-holder to the judgment-debtor under sub-section (2) of that section ;
- (o) the form of an application under section 38 ; and
- (p) the manner in which an application under section 39 shall be made.

Penal Act
of 1933
shall apply
also to
cases in
which this
Act applies.

45. The Bengal Money-lenders Act, 1933, shall not apply to any loan to which this Act applies nor to any transaction connected with such loan.

THE SCHEDULE

[See sections 14 (1) (b) and 15]

Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 379 to 382, **XLV of 1860.** 384 to 389, 392 to 404, 406 to 409, 411 to 414, 417 to 424, 449, 450, 451 (with intent to commit theft), 454 (with intent to commit theft), 455, 457 (with intent to commit theft), 458 to 462, 465, 477 and 477A or under section 52 of the Indian **VI of 1898** Post Office Act, 1898.

TRAVANCORE REGULATIONS

The existing law relating to interest is governed by the following regulations. Only relevant sections have been reproduced.

1. *Section 17 (5) of Travancore Regulation I of 1010.*—"In decrees on suits, the Munsiff shall allow in the decree the interest that may be due from the period the suit may have been instituted to the day on which the decree shall be passed ; but he is prohibited from decreeing on account of interest a sum exceeding the principal, if the claim be for paddy or grain, and only one half exceeding the principal, if for money ".

2. *Section 21 of Travancore Regulation IV of 1010.*—"In decree on civil suits, the interest must be charged on the principal from the date of the decree to the day of its execution, provided the interest in money does not exceed half the amount of the principal, and if in grain, the interest demanded must not exceed the value of the principal ".

3. *Section 31 of the Travancore Civil Procedure Code Regulation, VIII of 1100.*—(1) 'In suits for money, no Court shall, in respect of the period antecedent to the institution of the suit, allow in its decree, a higher rate of interest than twelve per cent per annum and the amount adjudged as interest for such period shall not exceed one half of the principal amount sued for.

(2) Notwithstanding anything contained in Regulation I of 1010, where the decree is for the payment of money, the account may, in addition to the interest awarded under subsection (1) decree payment of interest on the principal sum adjudged of such amount as may accrue at a rate not exceeding twelve per cent from the date of suit to the date of decree.

(3) Notwithstanding anything contained in Regulation IV of 1010, where the decree is for the payment of money, the court may, in addition to the interest decreed under subsections (1) and (2) decree future interest at a rate not higher than nine per cent. on the aggregate sum adjudged from the date of decree to the date of payment or to such earlier date as the court thinks fit, provided, however, that the amount of interest accruing from the date of the decree shall not exceed the aggregate sum adjudged.

(4) Where such a decree is silent with respect to the payment of future interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit therefore shall not lie ".

THE COCHIN USURIOUS LOANS ACT, 1936

Act XXVIII of 1111

amble. Whereas it is expedient to give additional powers to courts to deal in certain cases with usurious loans of money or in kind, it is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Regulation may be called “The Cochin Usurious Loans Regulation, XXVIII of 1111”.

(2) It extends to the whole of Cochin.

(3) It shall come into force on a day to be notified in the Cochin Government Gazette by the Government.

(4) The Government may, by notification in the Government Gazette, direct that it shall not apply to any area, class of persons, or class of transactions, which it may specify in its notification.

Definitions. 2. In this Regulation, unless there is anything repugnant in the subject or context,—

(1) ‘ interest ’ means rate of interest and includes the return to be made, over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(2) ‘ loan ’ means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) ‘ suit ’ to which this Regulation applies ’ mean any suit :—

(a) for the recovery of a loan made after the commencement of this Regulation ; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made after the commencement of this Regulation in respect of any loan made either before or after the commencement of this Regulation ;

(c) for the redemption of any security given after the commencement of this Regulation in respect of any loan made either before or after the commencement of this Regulation.

Re-opening of transactions. 3. (1) Notwithstanding anything contained in any Regulation, where, in any suit to which this Regulation applies whether heard *ex parte* or otherwise, the Court has reason to believe,—

(a) that the interest is excessive ; or

The Cochin Usurious Loans Act, 1936

[COCHIN ACT XXVIII OF 1936]

- (b) that the transaction was as between the parties thereto substantially unfair, the Court shall exercise all or any of the following powers, namely,
- (i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest ;
 - (ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof ;
 - (iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that in the exercise of these powers the Court shall not—

- (i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at the date more than six years from the date of the transaction ;
- (ii) do anything which affects any decree of a Court or any award under the Co-operative Societies Regulation, IV of 1938.

Explanation.—In the case of a suit brought on a series of transactions, the expression “transaction” means, for the purposes of proviso (i) ‘ the first of such transactions ’.

(2) (a) In this section ‘ excessive ’ means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared or must be taken to have appeared, to the creditor, at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged the periods at which it is calculated and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor by way of loan, so far as the same were known or must be taken to have been known to the creditor.

The Cochin Usurious Loans Act, 1936

[COCHIN ACT XXVIII OF 1111]

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor, at the time of the loan so far as the same were known or must be taken to have been known to the creditor.

Explanation.—Interest may by itself be sufficient evidence that a transaction was substantially unfair.

(e) Interest above 12 per cent. per annum shall be deemed to be excessive within the meaning of this section. This presumption shall apply to compound interest also.

(3) This section shall apply to any suit whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security.

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bonafide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

Within the meaning of this sub-section, a person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act 1872, section 229.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

insolvency
proceedings.

4. On any application relating to the amount or admission of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Regulation applies.

penalty.

5. A creditor who stipulates for interest, simple or compound, exceeding 12 per cent. per annum, or does any act by which he in effect secures to himself interest exceeding such rate, shall, on conviction before a Magistrate of the First Class, be liable to a fine not exceeding Rs. 500 :

Provided that no prosecution for an offence under this section shall be started unless by or with the sanction of the Court which has had to deal with the transaction, in which such prohibited rate of interest was stipulated for, or with the act, by which such interest was in effect secured.

THE UNITED STATE OF GWALIOR, INDORE AND MALWA (MADHYA BHARAT) MONEY- LENDERS ACT,

Samvat 2007

Act No. 62 of 1950 (Samvat 2007)

An Act to control and regulate the transaction of money-lending in the United State of Gwalior, Indore and Malwa (Madhya Bharat)

WHEREAS it is expedient to make provision for the regulation and control of the transactions of money-lending in the United State of Gwalior, Indore and Malwa (Madhya Bharat), it is hereby enacted as follows :—

1. (1) This Act may be called the “ United State of Gwalior, Indore and Malwa (Madhya Bharat) Money-lenders Act, Samvat 2007 ”.

**Short title,
extent and
commence-
ment.**

(2) It shall extend to the whole of the United State of Gwalior, Indore and Malwa (Madhya Bharat).

(3) It shall come into force on such date as Government, by notification in the Government Gazette of the said United State, may direct.

(4) The Government may by notification in the Government Gazette exclude any portion of the United State of Gwalior, Indore and Malwa (Madhya Bharat) from the operation of the whole or any part of this Act from time to time.

(5) It shall apply in the first instance to those money-lenders only who advance a loan to an agriculturist, but Government may, from time to time, extend its operation to any other money-lenders also.

2. In this Act unless there is anything repugnant in the subject or context :—

(1) “ Bank ” means a Company carrying on the business of banking and registered under the Companies Act for the time being in force in the United State of Gwalior, Indore and Malwa (Madhya Bharat) ;

(2) “ Company ” means a Company registered under the Companies Act for the time being in force in the United State of Gwalior, Indore and Malwa (Madhya Bharat) ;

(3) “ Co-operative Society ” means a Society registered under the Co-operative Societies Act, of the United State of Gwalior, Indore and Malwa (Madhya Bharat) ;

- (4) "Money Lender" means a person who, in the regular course of business, advances a loan as defined in this Act and shall include subject to the provisions of Section 8 (2), the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise of the person who advances the loan.

Explanation.—The word "person" includes an association or body of persons whether incorporated or not.

- (5) "Interest" includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise ;
- (6) "Loan" means an advance, whether of money or in kind, at interest and shall include any transaction, which the Court finds to be in substance a loan, and also includes a pawn but it shall not include :—
- (a) a deposit of money or other property in a Government post office or bank or any other bank or in a company or with a co-operative society ;
 - (b) a loan advanced by the Government or by any local authority authorized by the Government.
 - (c) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by certified auditor under the Companies Act of the United State of Gwalior, Indore and Malwa (Madhya Bharat) ;
 - (d) a transaction which is in substance a charge on, or a sale of immovable property ;
 - (e) an advance to a agricultural labourer by his employer ;
- (7) "Prescribed" means prescribed by rules made under this Act ;
- (8) "Sub-Registrar" means a Sub-Registrar appointed under the Registration Act for the time being in force in the United State ;
- (9) "Court" includes a court acting in the exercise of Insolvency jurisdiction ;
- (10) "Principal" means in relation to a loan the amount actually lent to the debtor ;
- (11) "Agriculturist" means a person who earns his livelihood wholly or mainly from agriculture, or rent or revenue from agricultural land and includes a person who is ordinarily engaged in agricultural labour or who works as an agricultural artisan in a village ;
- (12) "Agriculture" includes :—
- (a) the raising of annual or periodical crops or garden produce ;
 - (b) horticulture ;

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[MADHYA BHARAT ACT 62 OF 1950]

- (c) the planting and up-keep of orchards ;
- (d) reserving of lands for fodder, grazing or thatching grass ;
- (13) "Government" means the Government of the United State ;
- (14) "United State" means the United State of Gwalior, Indore and Malwa (Madhya Bharat).

3. (1) Every money-lender shall register himself as money-lender by an application made to the Sub-registrar of any pargana of the district or districts in which the principal place of business of such money-lender or a branch thereof is situated and, on such registration, the Sub-registrar shall grant a registration certificate to the money-lender in such form as may be prescribed.

Registration of money-lenders and registration certificate.

(2) Every application made under sub-section (1) shall be in writing on a court fee stamp of eight annas, and shall accompany a separate court fee stamp of rupees two (to be affixed to the registration certificate), and contain such particulars as may be prescribed ;

(3) No money-lender shall be entitled to bring any suit for the recovery of his loan unless the provisions of this section are complied with.

Register of money lenders.

4. Every Sub-registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

Power to cancel certificate.

5. Any civil court, within whose jurisdiction the money-lender carries on business or the authority who registered him as such, may cancel the certificate at any time on the ground that the holder of the certificate has been found to have persistently acted against any of the provisions of this Act.

6. A registration certificate granted under Section 3 shall be in force for three years from the date of the registration. Such certificate and a certificate granted under any of the repealed Acts may be renewed in the manner prescribed. The application for renewal shall bear a petition stamp, and shall accompany a separate court fee stamp of rupees two (to be affixed to the renewed certificate) and shall contain such particulars as may be prescribed :

Duration of Registration Certificate.

Provided that the registration authority may refuse to renew the certificate, if it is found that the applicant has contravened any of the provisions of this Act.

7. The aggrieved party may file a revision application against an order of the registration authority of the Judicial Officer passed under Section 5 or 6 before the District and Sessions Judge.

Revision.

8. (1) A money-lender registered under the provisions of the Moneylenders Act, Gwalior State, Samvat 2003, or the Indore Money-lenders Act No. V of 1938, or Shahukar Sambandi Vidhan, Dewas State Junior, 1943 or any similar enactment for the time being in force in any of the Covenanting State, shall be deemed to have been registered in accordance with the provisions of this Act.

Money-lenders registered under the laws of the Covenanting States to be deemed as registered under this Act.

But to carry on business without registration certificate.

(2) Save as provided in sub-section (1) no money-lender shall, after the expiration of three months from the date on which this Act is brought into force, carry on his business as money-lender without obtaining a registration certificate under section 3.

Maintenance of accounts by money-lenders and supply of statement thereof to debtors.

9. (1) Every money-lender shall —

- (a) regularly maintain an account for each debtor separately; and
- (b) furnish such debtor every year with a legible statement of accounts signed by the money-lender or his agent, *munim* or *gumashta* of any balance or amount that may be outstanding against such debtor within three months after Diwali (Kartik Badi Amawas) of each year. Such statement of accounts shall include all transactions in respect of the loan entered into during the year to which the statement relates and shall be furnished in legible Hindi language and Devanagiri script and in such manner, and in such form and containing such details as may be prescribed.

(2) The account required under clause (a) of sub-section (1) shall be so maintained that items due by way of interest shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The money-lender shall not include the interest or any portion of it in the principal sum, and the principal and interest shall be separately shown in the opening balance of each new annual account;

Provided that —

- (i) if the loan has, since it was originally advanced passed by inheritance or assignment to a widow or a minor, such widow or minor shall not be bound to furnish the account under sub-section (1) for a period of one year from the date of such passing;
- (ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the account under sub-section (1) in the case of a loan wherein the title to recover is sub-judice between two or more persons claiming as money-lenders adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.

Evidential value of copies of accounts.

10. Copies of the entries in the account required to be maintained under clause (a) of sub-section (1) of section 9, when certified in such manner as may be prescribed, shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

Debtor not bound to admit correctness of accounts supplied.

11. A debtor to whom a statement of accounts has been furnished under clause (b) of sub-section (1) of section 9, shall not be bound to acknowledge or deny its correctness and his failure to protest shall not by itself be deemed to be an admission of the correctness of the account.

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[MADHYA BHARAT ACT 62 OF 1950]

12. Every money-lender, who receives repayment from his debtor on account of any loan advanced to him, shall forthwith give a receipt thereof in the prescribed form and shall take the signature of the debtor on the counterfoil of the receipt maintained for the purpose. Receipt for repayment of loan.

13. Notwithstanding anything contained in any other enactment for the time being in force in any suit or proceeding relating to a loan — Procedure of Court in suits regarding loans.

- (a) the Court shall, before deciding the claim on the merits, frame and decide the issue whether the money-lender has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 9;
- (b) if the Court finds that the provisions of clause (a) of sub-section (1) of section 9 have not been complied with by the money-lender, it shall if the plaintiff's claim is established in whole or in part, disallow whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case, and may disallow costs, and
- (c) if the Court finds that the provisions of clause (b) of sub-section (1) of section 9 have not been complied with by the money-lender, it shall, in computing the amount of interest due upon the loan, exclude every period for which the money-lender omitted duly to furnish the account as required by that clause and may disallow costs either wholly or partly :

Provided that if the money-lender has, after the time prescribed in that clause, furnished the account and the plaintiff satisfies the Court that he had sufficient cause for not furnishing it earlier, the Court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

Explanation.—A money-lender who has maintained his account and furnished his annual statement of accounts in the prescribed form and manner shall be held to have complied with the provisions of clauses (a) and (b) of sub-section (1) of section 9 in spite of any errors or commissions if the Court finds that such errors or omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of those clauses.

14. The provisions of this Act shall not apply to any loan made before this Act comes into force except such loans as were advanced after the Money-lenders Act, Gwalior State, Samvat 2003, the Indore Money-lenders Act No. V of 1938, or the Sahukar Sambandhi Vidhan, Dewas Junior, 1943 or any similar enactment of any other Covenantee States came into force in the Covenantee States of Gwalior, Indore or Dewas Junior or such other Covenantee States respectively.

The United State of Guahar, Indore and Malwa (Madhya-Bharat) Act, 1950.

[MADHYA BHARAT ACT 62 OF 1

Provided that, if any fresh transaction in respect of a loan made before this Act comes into force, is made after this Act comes into force, such transaction shall be subject to the provisions of this Act.

Power to li-
mit interest
recoverable
in the case
of loans

15. (1) Notwithstanding anything contained in any other enactment for the time being in force, arrears of interest granted by a Court in respect of loans made before or after this Act comes into force, shall not exceed when added to interest already paid, the amount of the principal.

(2) A decree passed under sub-section (1) may carry future interest at a rate not exceeding 6 per cent. per annum, but during the execution of a decree whether passed before or after the passing of this Act, the recovery on account of the arrears of interest shall not exceed when added to interest already paid, either before or after the passing of the decree, the amount of the principal:

Provided that the amount of costs mentioned in the decree and the costs of execution proceedings shall be recoverable in addition to the principal and interest recoverable under the foregoing sub-section.

(3) The amount found due on account of the principal, and the arrears of interest and the amounts already paid on account of principal or interest shall be clearly shown in the decree.

(4) The Court shall while passing a decree against an agriculturist direct that the decretal amount shall be paid in such number of annual instalments and subject to such conditions on the dates fixed by it as having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

Power to li-
mit interest
in the case
of new loans.

16. (1) Any agriculturist who owes any debt to his creditors, may sue for accounts of such debts and of money paid by him to his creditors and for determination of the amount, if any, still payable by him to the creditors on a court fee stamp of Rs. 2 upto a sum of Rs. 500 and Rs. 5 for a sum exceeding Rs. 500.

(2) If the creditor, against whom a declaratory decree has been passed under sub-section (1), pay into the Court such court fees as are required under the law for the time being in force, for the declared amount, such declaratory decree shall be converted into a money decree against the debtor and the provisions of section 15 shall apply *mutatis mutandis* to such decree.

Power to di-
rect payment
of decretal
amount by
instalments.

17. The Court may, at any time on the application of a judgment-debtor after hearing the decree holder's objections if any, direct that the amount of any decree passed against him, before this Act comes into force, in respect of a loan shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

Penalties

18. Whoever contravenes the provisions of sections 8 (2), 9 or 12 of this Act shall be punished with a fine which may extend to two hundred rupees or if he has previously

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[MADHYA BHARAT ACT 62 OF 1950]

been convicted of an offence under that section with fine which may extend to Rs. 1,000.

19. The offences under this Act shall be triable by a Magistrate of the Second Class and shall be non-cognizable, bailable and compoundable. Offences under this Act by whom triable.

20. (1) The Government may, by notification in the Government Gazette, withdraw the Registration Certificate granted to any money-lenders under section 3 of this Act and may also prohibit any class of persons from carrying on the business of money-lending either generally or in any specified area. Prohibition.

(2) Any person acting against such prohibition shall be liable to be punished with fine which may extend to five hundred rupees, or with imprisonment of either description which may extend to six months or with both.

21. (1) All rules for which provision is made in this Act shall be made by the Government and shall be consistent with this Act. Power to make rules.

(2) No rule shall come in force without its previous publication.

(3) In particular and without prejudice to the generality of the foregoing power, the Government may make rules prescribing—

(a) the manner and form with numerals in which statement of accounts shall be furnished and the detail to be given in such statements under clause (b) of sub-section (1) of section 9;

(b) the manner in which copies of entries in the account shall be certified under section 10;

(c) the form and particulars of a register under section 4;

(d) the form of registration certificate under section 3 (1);

(e) the particulars of an application under section 3 (2);

(f) the particulars of an application under section 6; and

(g) the regulation of the business of the pawn-broker.

(4) The Government may also prescribe a punishment which may extend to a fine upto one hundred rupees for the violation of the provisions contained in the Rules made under this Act.

22. As soon as this Act comes into force the Money-lenders Act, Gwalior State, Samvat 2003, the Indore Money-lenders Act No. V of 1938, and Shalukar Samlandhi Vidhan, Dewas Junior, 1943, and all other Acts, Circulars and Standing Orders relating to the regulation and control of the transactions of money-lending in any of the Covenanted States shall stand repealed. Repeal.

Provided that all orders given and actions taken under the aforesaid Acts, Circulars and Standing Orders shall be deemed to have been given or taken, as the case may be under this Act.

THE MYSORE USURIOUS LOANS REGULATIONS.

Regulation No. IX of 1923.

A regulation to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind; His Highness the Maharaja is pleased to enact as follows :—

Short title
and extent.

1. (1) This Regulation may be called the Usurious Loans Regulation, 1923.

(2) It extends to the whole of Mysore.

(3) The Government may, by notification in the Official Gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(1) “Interest” means rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specially by way of interest or otherwise.

(2) “Loan ” means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) “Suit to which this Regulation applies ” means any suit,—

(a) for the recovery of a loan made after the commencement of this Regulation ; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Regulation in respect of any loan made either before or after the commencement of this Regulation.

Re-opening
of transac-
tions.

3. (1) Where, in any suit to which this Regulation applies whether heard *ex parte* or otherwise, the Court has reason to believe,—

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may,—

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest ;

The Mysore Usurious Loans Regulation, 1923

[MYSORE REGULATION IX OF 1923]

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

Provided that in the exercise of these powers the Court shall not—

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than six years from the date of the transaction :

(ii) do anything which affects any decree of a Court.

Explanation.—In the case of suit brought on a series of transactions the expression ‘the transaction’ means, for the purpose of proviso (i), the first of such transactions.

(2) (a) In this section “excessive” means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) in considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.—Interest may of itself be sufficient evidence that a transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of

The Mysore Usurious Loans Regulation, 1923

[MYSORE REGULATION [X OF 1923]

a loan or for the enforcement of any agreement or security in respect of a loan.

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide*, and that he had at the time of such transfer notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, the word 'notice' shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Regulation, 1918.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

insolvency
proceedings.

4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Regulation applies.

THE MYSORE MONEY LENDERS ACT, 1939

Act XIII of 1939

WHEREAS it is expedient to regulate and control the transactions of money lending, it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title 1. (1) This Act may be called, the Mysore Money Lenders Act, 1939.

Application (2) The Government may, by notification in the official Gazette, apply all or any of the provisions of this Act to any local area or to any class of money lenders from such date as may be specified in the notification exclude from the operation of this Act any local area or exempt any money lender or class of money lenders or any class of loans from the operations of all or any of the provisions of this Act.

Definitions 2. In this Act, unless there is anything repugnant in the subject or context :—

(1) “ court ” includes a court acting in the exercise of insolvency jurisdiction;

(2) “interst” includes any sum, by whatsoever name called in excess of the principal, paid or payable to a money lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged in accordance with the provisions of this Act, or any other law for the time being in force, by a money lender for or on account of cost, charges or expenses;

(3) “loan” means an advance, whether of money or in kind, at interest made by a money lender and includes any transaction which in the opinion of the court is in substance a loan ;

(4) “money lender” means an individual or an undivided Hindu family or an unincorporated body of individuals or body corporate incorporated under any law in Mysore or outside Mysore, or a body which stands to any such body corporate in relation of a subsidiary body and includes assignees and the legal representative of the money lender who or which—

(i) carries on the business of money lending in the State or

(ii) has his or its principal place of such business in the State ,

and includes a pawn-broker,

The Mysore Money-lenders Act, 1939

[MYSORE ACT XIII OF 1939]

(5) "money-lending business" or "business of money-lending" means the business of advancing loans either solely or in common with any other business ;

(6) "pawn-broker" means a person who carries on the business of taking goods and chattels in pawn for a loan ;

(7) "pawner" means a person delivering an article for pawn to a pawn-broker :

(8) "prescribed" means prescribed by rules made under this Act ;

(9) "principal" means in relation to a loan the amount actually lent to the debtor ;

(10) "register" means a register of money-lenders maintained under section 4 ;

(11) "Registrar" means the Registrar of money-lenders appointed under section 3 ;

(12) "secured loan" means a loan for which the money-lender holds a mortgage, charge or lien on the property of the debtor or any part thereof as a security for that loan; and

(13) "unsecured loan" means any loan other than a secured loan.

CHAPTER II.

REGISTRATION AND LICENSING OF MONEY-LENDERS.

Appointment of Registrars 3. The Government may appoint Registrars of money-lenders for the purpose of this Act and may define the local areas within which each Registrar shall exercise his powers and perform his duties.

Register of money lenders. 4. The Registrar shall maintain a register of money-lenders^s in such form as may be prescribed.

Application for Registration. 5. Every money-lender shall apply in writing to the Registrar for the area in which the principal place of business of such money-lender is situated or in which he intends to carry on the business of money-lending, to be registered as a money-lender. The application shall contain such particulars as may be prescribed. On receipt of such application the Registrar shall register the name of the applicant in the register unless disqualified under section 19. Any such person ceasing to carry on the business of money-lending may, on application to the said authority, get his name struck off from the register.

Duration of registration. 6. A registration of a money-lender shall be valid for three years from the date of registration but may be renewed from time to time. If renewed it shall have effect for three years from the date of the renewal.

Licence. 7. Every money lender whose name has been registered and to whom this section is made applicable shall annually take out a licence from the Registrar on payment of the prescribed fee in such form and subject to such conditions as may be prescribed for carrying on the business of money-lending.

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annual. 8. A licence granted under section 7 shall, unless sooner cancelled, be in force for one year from the date on which it is granted.

CHAPTER III.

REGULATION OF ACCOUNTS.

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unts. 9. Every money lender shall in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act, regularly record and maintain or cause to be recorded and maintained an account in such form, language, script and numerals as the Government may prescribe.

ceipts to
given. 10. Every money-lender shall, at the time of payment, give to the debtor or his agent for the sum paid by him or on his behalf, a receipt duly signed and if necessary stamped.

wishing
ement of
unt. 11. (1) Every money-lender shall, on demand made in writing by the debtor at any time during the period when the loan or any part thereof has not been repaid, on payment of the prescribed fee, furnish to the debtor or if he so requires to any person mentioned by him in that behalf, a statement of account in the prescribed form and showing the amount which remains outstanding on account of the principal and of interest :

Provided that where a money-lender has complied with the demand, the debtor shall not make a further demand for a statement of account in respect of the same loan within a period of six months from the date of such compliance.

(2) A person to whom a statement of account has been furnished under sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to object to the correctness of the account shall not itself be deemed to be an admission of the correctness of such account.

ty of
wn-broker
keep
counts. 12. (1) Every pawn-broker shall regularly record and maintain an account in which, in addition to the particulars contained in the form prescribed under section 9, the following particulars are recorded, namely :—

(a) a full and detailed description of the article or of each of the articles taken in pawn ;

(b) the time agreed upon for the redemption of the pawn ;

(c) the name of the pawner and, where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.

(2) A true copy of the entries in such account signed by the pawn-broker or his duly authorised agent shall be delivered by him to the pawner at the time of the pawn on tender of the prescribed fee.

pection of
counts. 13. (1) If an officer specially authorised in this behalf but the Government has reason to believe that the accounts required to be maintained under this Act by a money-lender

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are not properly maintained by him, such officer may call upon the money-lender to produce all his books of account for inspection and such money-lender shall be bound to produce all such books.

(2) If from such inspection it appears that such money-lender has committed any offence under this Act, such officer may cause proceedings to be instituted against him in the court having jurisdiction.

CHAPTER IV.

PROVISIONS RELATING TO SUITS IN RESPECT OF LOANS

The maximum rates of interest to be decreed. 14. Notwithstanding anything contained in any law for the time being in force, no court shall in any suit brought in respect of a loan advanced after the commencement of this Act, pass a decree for interest at rates exceeding 9 per centum per annum in the case of a secured loan and 12 per centum per annum in the case of an unsecured loan.

Maximum rate of compound interest. 15. No money-lender shall recover by suit interest of any kind at a rate exceeding 6 per centum per annum with yearly interests in respect of any loan made after the commencement of this Act under a contract which provides for the payment of compound interest.

Act IX of 1923. What is excessive interest under Usurious Loans Act. 16. Where the interest charged is in excess of the rates prescribed as maximum in sections 14 and 15, the court shall presume for the purpose of section 3 of the Usurious Loans Act, 1923, that the interest charged is excessive and that the transaction was substantially unfair.

Arrears of interest not to exceed principal. 17. No court shall, in respect of a loan advanced before or after the commencement of this Act, decree on account of arrears of interest, a sum greater than the principal of the original loan.

Penalty for non-compliance with section 9 or section 12. 18. Notwithstanding anything contained in any enactment for the time being in force—

(a) if in any suit or proceeding relating to a loan the court finds that the provisions of section 9 or section 12 have not been complied with by the money-lender it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow the whole or any portion of the costs ;

(b) if the money-lender to whom a demand has been made under section 11 fails without reasonable excuse to comply therewith within one month after the demand has been made, the court shall disallow interest for the period of default.

CHAPTER V.

PENALTIES.

Court's power to suspend or cancel licence. 19. (1) Where in any suit brought in respect of a loan by a money-lender, the court is of opinion that the money-lender has been guilty of fraud or of any contravention of the provisions of this Act, or of any rule made thereunder and is unfit to carry on the business of money-lending, the

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[MYSORE ACT, XIII OF 1939]

court may order that the licence held by such money-lender or his registration be suspended for such time as the court may think fit or cancelled and may also declare such money-lender disqualified from obtaining a licence or being registered under this Act either permanently or for such period as it thinks fit.

(2) The court shall cause the particulars of any order made under this section to be endorsed on the licence held by the money-lender against whom such order is made and shall cause copy of its order to be sent to the Registrar by whom the licence was granted or the registration was made, for the purpose of entering such particulars in the register.

(3) Every holder of a licence shall, on being called upon by the court to do so, produce the licence within such time as may be directed by the court.

(4) Any person whose licence or registration has been cancelled or suspended in accordance with the provisions of this section shall, during the period for which such order of cancellation has effect or during the period of suspension, as the case may be, be disqualified from being registered or obtaining a licence.

(5) Re-hearings of, and appeals from, any order, under sub-section (1) may be had in the same manner and subject to the same conditions in, and subject to which appeals may be had from, any order or decision of the same court within its ordinary jurisdiction. In cases cognizable by a court of small causes appeal shall lie to the principal court of original jurisdiction in the division.

penalty for
contraven-
tion of
Provisions.

20. Whoever makes default in complying with or acts in contravention of any of the provisions of this Act shall, if no specific penalty has been provided in this Act, be punishable,—

(a) for the first offence with fine which may extend to rupees two hundred;

(b) for the second offence with fine which may extend to rupees five hundred; and

(c) for any subsequent offence with imprisonment of either description for a term not exceeding one month or with fine which may extend to rupees five hundred or with both;

and on a conviction under sub-clause (c), the court may also order that his registration or licence shall be cancelled.

Removal of
disqualifica-
tion.

21. The Government may, at any time on application in the prescribed form accompanied by the prescribed fee, remove a disqualification imposed on a money-lender by a court under section 19 or section 20, having regard to the time which has elapsed since the order and the circumstances under which it was made or to the time which has elapsed since the conviction and to the nature of offence.

Limitation
for prosecu-
tions.

22. No prosecution for an offence under this Act or any rule made thereunder shall be instituted except within one year next after the commission of such offence.

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Penalty for molestation,

23. Whoever molests, or abets the molestation of a debtor for the recovery of a debt owed by him to his creditor shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

Explanation.—For the purpose of this section, a person who, with intent to cause another person to abstain from doing or to do any act which he has a right to do or to abstain from doing—

(a) obstructs or uses violence or intimidates such other person ; or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof ; or

(c) loiters or does any similar act at or near a house or other place where such other person resides or works, or carries on business, or happens to be ;

shall be deemed to molest such other person :

Provided that a person who attends at or near such house or place in order merely to obtain or communicate information or to make a demand for a loan due shall not be deemed to molest.

(2) Notwithstanding anything contained in the Second Act II c Schedule to the Code of Criminal Procedure, 1904, an offence 1904. under this section shall be a cognizable offence as defined in the Code.

CHAPTER VI.

MISCELLANEOUS.

Power to make rules

24. (1) The Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(i) the form of the register mentioned in section 4 ;

(ii) the form of the application mentioned in section 5 and the particulars to be contained therein ;

(iii) the form and conditions of the licence mentioned in section 7, the fee therefor and the manner of payment of the fees ;

(iv) the form, language, script and numerals to be used in the accounts required to be kept under section 9 ;

(v) the form of the statement of account to be furnished under section 11 and the details to be included therein and the fee to be paid for such statement ;

(vi) the fee to be paid for a copy of the entries in a pawn-broker's account to be furnished under section 12 ; and

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[MYSORE ACT XIII OF 1939]

(vi) the form of the application for removal of a disqualification under section 21 and the fee therefor.

Savings.

25. Nothing contained in this Act shall affect the provisions of the Mysore Agriculturists Relief Act, 1928, or the powers of a court under the Usurious Loans Act, 1923, except to the extent specified in section 16.

Mysore
Act XVIII
of 1928 and
Act IX of
1923.

Extension of
application
of certain
provisions of
Act.

26. The Government may, by notification in the official Gazette, apply all or any of the provisions of Chapters III, IV and V to the loan transactions of creditors other than money-lenders.

THE HYDERABAD MONEY-LENDERS ACT.

Act No. 5 of 1349 Fasli.

(AS AMENDED BY ACT NO. I OF 1351 F., REGULATION NO. 16 OF 1355 F. AND ACT NO. 9 OF 1357 FASLI.)

Preamble.

WHEREAS it is expedient to make better provision for the regulation and control of the transactions of money-lending ; it is hereby enacted as follows :—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Hyderabad Money-lenders' Act 1349 Fasli, and shall come into force in the whole of H. E. H. the Nizam's Dominions from the date of its publication in the Government Gazette, and from such date the Money-lenders' Regulation of 1347 F. and the Regulation for the Relief of Indebted Agriculturists and the Prevention of Usury of 1341 F. shall be repealed.

(2) Any forms prepared, money-lenders registered licences issued or any other act done under the Money-lenders' Regulation of 1347 F. upto the date of commencement of this Act, shall be deemed to have been prepared, registered, issued or done under this Act, and this Act shall apply to them all in the same manner as if they had been prepared, registered, issued or done under this Act.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(i) " Bank " means a company carrying on the business of banking and registered under the Company's Act No. IV of 1320 F. of H. E. H. the Nizam's Dominions ;

(ii) " Company " means a company registered under the Company's Act No. IV of 1320 F. of H. E. H. the Nizam's Dominions ;

(iii) " Co-operative Credit Society " means a society registered under the Co-operative Credit Societies' Act No. II of 1323 F. in H. E. H. the Nizam's Dominions ;

(iv) " Loan " means an advance whether of money or in kind at interest, whether secured or unsecured and shall include any transaction which is in substance a loan, but it shall not include—

(a) a deposit of money or other property in Post Office or any Bank or in a Company or with a Co-operative Society ;

(b) a loan to or by or a deposit with any society or association registered under any enactment ;

(c) a loan advanced by Government or by any local authority authorised by Government ;

(d) a loan advanced by a bank, a Co-operative Society or a Company ;

(e) an advance made on the basis of a negotiable instrument, as defined in the Negotiable Instrument Act 1318 F. other than a promissory note ;

The Hyderabad Money-lenders Act, 1349 F

[ACT 5 OF 1349 F.]

- (f) a loan advanced to an agricultural labourer by his employer ;
- (g) a loan advanced by a trader to a trader in the regular course of business, in accordance with trade usage ; and
- (h) money owned to a trader by a person other than an agriculturist or a labourer for articles sold on which interest is charged for non-payment on due date ;
- (v) "Principal" means in relation to a loan the amount actually lent to the debtor ;
- (vi) "Interest" includes the return to be made over and above what was actually lent, whether specifically by way of interest or otherwise ;
- (vii) "Money-lender" means a person, including a pawn-broker, who carries on the business of advancing loans as defined in this Act, either solely or in common with other business, and shall include the legal representative of such person and also the person who by inheritance, assignment or otherwise claims to be representative of person ;
- (viii) "Pawn-broker" means a person who carries on regular business of taking goods in pawn for a loan ;
- (ix) "Trader" means a person who in the regular course of business buys and sells goods and property and shall include—
 - a wholesale or retail merchant,
 - a commission agent,
 - a broker,
 - a manufacturer,
 - a contractor,
 - a factory owner,
 but shall not include a person who sells only his own agricultural produce or cattle or buys agricultural produce or cattle for his own use ;
- (x) "Agriculturist" means a person who is a member of an agricultural class within the meaning of the Prevention of Agricultural Land Alienation Act No. 3 of 1349 F. and whose main source of livelihood is agriculture ;
- (xi) "Labourer" means a person who earns his livelihood exclusively by manual labour and whose wages in cash or in kind does not exceed one rupee per day or Rs. 30 p.m. ;
- (xii) "Prescribed" means prescribed by rules made under this Act ;
- (xiii) "Stranger" means a person who has been defined in clause (K) of section 2 of the Hyderabad Public Security Act.

Non-Mulki Money-lenders prohibited from carrying on the business of money-lending.

2-A. (1) From 18th Khurd 1355 F. no money-lender who is a stranger shall carry on the business of money-lending.

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[ACT 5 OF 1349 F.]

(2) All licences granted to the money-lenders mentioned in sub-section (1) shall be deemed to have been cancelled and all money-lending transactions made by such persons as money-lenders shall cease from 18th Khurd 1355 F. Such money-lenders shall not be entitled to any refund of licence fees or compensation on account of the cancellation of their licences.

(3) The money-lenders mentioned in sub-section (1) who prior to 18th Khurd 1355 Fasli were in possession of licences under the said Act may recover any loans advanced by them before the said date through the competent court as provided under this Act.

(4) A money-lender mentioned in sub-section (1) who carries on the business of money-lending in contravention of the provisions of the said sub-section or recovers his dues otherwise than in accordance with the provisions of sub-section (3) shall on conviction before the Taluqdar be punishable with imprisonment for a term which may extend to one year or with fine or with both. An appeal from the decision of the Taluqdar shall lie to the Sessions Judge.

(5) An offence against this section shall be cognizable and bailable and the Court trying such offence shall, unless it is proved to the contrary, presume that the accused is a stranger and that he was carrying on the business of money-lending in contravention of this section.

Registration
money-
lenders.

3. (1) Every officer empowered by Government under this Act shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed. Such register shall be deemed to be public document within the meaning of the Hyderabad Evidence Act No. II of 1313 F.

(2) Every money-lender, in order to register himself, shall present an application, made in writing containing such particulars as may be prescribed, to the office empowered and on such application being presented, the officer shall register the applicant's name and shall grant a licence to the money-lender in such form and within such period as may be prescribed:

Provided that the licensing authority may, if he has reason to believe that a money-lender is an undesirable character, refuse to grant a licence, or to renew it, after recording his reasons for such refusal. An appeal shall lie from the order of the licensing authority refusing the grant or renewal of a licence to the Taluqdar, if the licensing authority is the Tahsildar, and to the Subeder if the licensing authority is the Taluqdar, and the decision of such appellate authority shall be final.

(3) Any person who makes an application under sub-section (2) shall pay with it such licence fee not exceeding twenty-five rupees as may be prescribed for the district in which it is granted.

(4) A licence granted under sub-section (2) shall be in force for one year from the date of issue.

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[Act 5 of 1349 F.]

(5) (a) No money-lender shall carry on his business as money-lender in any district without obtaining a licence as prescribed in sub-section (2),

(b) Whoever contravenes the provision of clause (a); shall be punishable with rigorous imprisonment for a term which may extend to 6 months or with fine or with both. In case of non-payment of fine, it shall be recoverable as arrears of land revenue. The Taluqdar of the District shall have power to give punishment under this clause subject to an appeal to the Sessions Judge.

(c) An offence against this sub-section shall be cognizable and bailable.

Power to
cancel or
suspend
licence..

4. (1) The Taluqdar shall be competent to cancel a licence or to suspend it for any period or to prohibit its renewal for a specified period not exceeding two years, if it is found after the commencement of this Act that a money-lender,

(a) has been held by a civil court to have contravened the provisions of sections 5, 6 or 8 in more than two suits, or

(b) has had his suit dismissed in whole or in part on the ground that an entry relating to a loan has been made in any document showing the amount of the sum advanced to be in excess of that actually advanced plus legitimate expenses incurred, or

(c) has had his suit dismissed with a finding that it is fraudulent, or

(d) has been found guilty by a court of forgery or cheating or force as defined in section 15 of the Hyderabad Contract Act No. VI of 1316 F. in respect of a money transaction,

(e) or his agent has been convicted of an offence under section 13.

But the Taluqdar shall not pass such orders until the prescribed period of appeal, revision or review as the case may be has expired or in case of appeal, revision or review, the appeal, revision or review has been finally decided.

(2) (a) The Taluqdar may take proceedings under the above sub-section *suo moto* or on the application of any party concerned :

Provided that no licence shall be cancelled or suspended nor shall its renewal be prohibited without giving the money-lender an opportunity to show cause.

(b) The Taluqdar may during the period of limitation for an appeal, either of his own motion or on the application of a party interested, review his own order, provided no appeal is pending with the Subedar. An appeal from the order of the Taluqdar shall lie to the Subedar whose decision shall be final.

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[Act 5 of 1349 F.]

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5. (1) Every money-lender shall—

(a) regularly maintain an account for each debtor separately of any loan advanced to that debtor ;

(b) furnish the debtor every year with a statement of account in the prescribed form signed by the money-lender or his agent of any balance or amount that may be outstanding against such debtor on such dates as may be prescribed. Such statement of account shall include all transactions in respect of the loan entered into during that year. Such statement shall be furnished, in the language of the village record of the district for which the money-lender has obtained a licence. In the municipal limits of Hyderabad City and such suburbs thereof as may be notified by Government in Gazette, the statement of account shall be in Urdu.

(2) The account required under clause (a) of sub-section (1) shall be so maintained that items of principal and interest may be separately and clearly ascertained and separate totals of principal and interest shall be shown. The money-lender shall not include the interest or any portion of it in the principal sum, and the opening balance of principal and interest shall be separately shown :

Provided that—

if after a loan was originally advanced by a money-lender, a widow or minor becomes entitled to such loan, such widow or minor shall not be bound to maintain and furnish the account under sub-section (1) for a period of one year from the date when such right accrued.

(3) The licensing authority or any person authorised by him in this behalf may inspect the account books of a money-lender to satisfy himself that the provisions of this section have been complied with.

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maintain-
by
pawnbrokers

6. (1) In addition to the duties mentioned in Section 5, every pawnbroker shall regularly maintain an account in which the following particulars shall be recorded—

(a) such details about each of the articles taken in pawn by which it can be identified,

(b) the time agreed upon between the parties for the redemption of pawn, and

(c) the name and address of the pawner.

(2) A statement of the entries mentioned above shall be delivered by the pawnbroker to the pawner at the time of the pawn in the language mentioned in Section 5 (1-b), under his or his authorised agent's signature.

(3) The licensing authority or any person authorised by him in this behalf may inspect the account books of a pawnbroker to satisfy himself that the provisions of this section have been complied with.

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7. A debtor to whom a statement of accounts has been furnished under clause (b) of sub-section (1) of Section 5 shall not be bound to acknowledge or deny its correctness and his silence shall not by itself be deemed to be an admission of the correctness of the account.

8. Every money-lender shall without delay give receipt for the repayment made by the debtor and if payment is

made by means of a 'chalan' he shall acknowledge receipt by endorsing thereon.

Procedure of Court in suits regarding loans.

9. Notwithstanding anything contained in any other enactment for the time being in force, in every suit relating to a loan

(1) the court shall frame and decide the issue whether the moneylender is a moneylender as defined in Section 2 (vii) of this Act, and whether he has complied with the provisions of Section 3, clauses (a) and (b) of sub-section (1) of Section 5 and sub-sections (1 and 2) of Section 6 ;

(2) if it is proved that the plaintiff is a money-lender as defined in Section 2 (vii) of this Act and is not licensed in accordance with the provisions of Section 3, the Court shall dismiss the suit ;

(2A) if it is proved that the provisions of clause (a) sub-section (1) of Section 5 or of sub-section (1) of Section 6, or of Section 8 have not been complied with by the money-lender and the plaintiff's claim is established in whole or in part the court shall disallow the whole or any portion of the interest due, as may seem reasonable to it in the circumstances of the case, and may disallow the whole or any portion of the costs ;

(3) if it is proved that the money-lender has, without sufficient cause failed to furnish the debtor with a statement of account in accordance with the provisions of clause (b) of sub-section (1) of Section 5 or of sub-section (2) of Section 6, the court shall, in computing the account of interest, exclude the interest for every period for which the money-lender failed to furnish the debtor with the statement of account.

Provided that if the money-lender has after the prescribed time furnished the account and the court is satisfied that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

Explanation. A money-lender who has maintained his account furnished his annual statements of accounts in the prescribed form and manner shall be presumed to have complied with the provisions of clauses (a and b) of sub-section (1) of Section 5 and of sub-sections (1 and 2) of Section 6 in spite of any errors and omissions, if the court is of opinion that such errors and omissions are accidental or not material and that the accounts have been kept in good faith.

Limit of interest.

10. (1) The rates of interest from the date of the coming into force of this Act, shall be limited to the maximum amount of 6 per cent simple interest in case of secured loans and 9 per cent simple interest in case of unsecured loans. From 18th Khurda 1355F, the rates of interest shall be limited to the maximum amount of 6 per cent simple interest in case of secured loans and 9 per cent simple interest in case of unsecured loans. The levy of compound interest as well as of charges on account of expenses incurred by a money-lender in respect

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of loans, except the charges mentioned in sub-section (3) below, is forbidden.

(2) The parties may make provision in the agreement that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract in respect of interest, the money-lender shall be entitled to charge simple interest on that sum from the date of the default until it is paid, at a rate not exceeding half the rate payable on interest in respect of the principal amount and the interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan ;

(3) Nothing in this section shall debar a money-lender from recovering costs of investigating title to the property, costs of stamp registration of documents and other out of pocket expenses as may be considered reasonable by the Court in cases where property is given as security or by way of mortgage :

Provided that both parties have agreed in writing to the levy of such costs and reimbursement thereof. Otherwise only such charges may be allowed as are leviable under the provisions of the Transfer of Property Act No. 1 of 1336F or any other law for the time being in force.

Explanation. In case of loans advanced and recovered in kind or in case of loans advanced in cash but repaid in kind, or in case of loans advanced in kind but repaid in cash, the amount of principal and interest shall be determined according to the local market price of the commodity at the time of lending and at the time of repayment.

Power of Court to limit interest in certain cases. 11. (1) The provisions of this Act shall not apply to a loan made before this Act comes into force.

Provided that no court shall decree, in respect of a loan advanced to an agriculturist or a labourer before the commencement of this Act on account of arrears of interest, a sum of greater than the principal.

(2) In the inquiry into a debt owed by an agriculturist or a labourer under sub-section (1) the account of arrears of interest shall be taken in the following manner :—

- (a) Previous accounts upto 12 years from the date of commencement of this Act shall be examined by debiting to the debtor the amount outstanding against him at the commencement of the said period as principal.
- (b) Separate accounts of principal and interest shall be taken.
- (c) In the account of principal there shall be debited to the debtor all such amounts as may from time to time have been actually received by him from the money-lenders and the price of goods, if any, sold as part of the transaction.
- (d) In the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transaction.

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- (e) In the account of interest there shall be debited to the debtor, upto the date of the commencement of this Act, simple interest on the balance of principal at the rate stipulated between the parties provided it does not exceed 9 percent per annum in the case of secured loan and 12 percent per annum in the case of unsecured loan, and from the date of commencement of this Act upto 18th Khurdad 1355F, the rate of interest shall not exceed 9 and 12 percent per annum respectively. From 18th Khurdad 1355F, the rate of interest shall not exceed 6 and 9 percent per annum respectively.
- (f) All payments made by or on account of the debtor to the money-lender or on his account, and all profit from services or other advantages of every description, received by the money-lender in the course of the transaction (estimated if necessary, at such money value as the court in its discretion or with the aid of arbitrators appointed by it may determine) shall be credited first in the account of interest ; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the account of the principal.
- (g) The accounts of principal and interest shall be separately made upto the date of instituting the suit, and the aggregate of the balance (if any) appearing due on each of such accounts shall be deemed to be the amount due from the debtor. But if after taking the accounts in this manner the amount of principal, the amount decreed on account of interest shall not exceed the principal.

Power to direct payment of decretal amount by instalment.

12. (1) The court may, at any time on the application of a judgment debtor, after notice to the decree-holder direct that the amount of a decree passed against him after this Act comes into force in which no instalments have been fixed, shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as having regard to the circumstances of the judgment debtor and the amount of the decree, if considers fit.

(2) When the debtor is an agriculturist or a labourer, the power mentioned in sub-section (1) may also be exercised in respect of a decree passed before this Act comes into force, provided that the said power shall not be exercised more than once in respect of the same or decree.

Punishment for molestation of debtor.

13. (1) Any money-lender or his agent who molests or abets the molestation of a debtor for the recovery of a debt shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.

Explanation.

For the purposes of this section a money-lender or his agent who, with intent to cause a debtor to abstain from doing or to

The Hyderabad Money-lenders Act 1349 F

[A T 5 OF 1349F]

do any act which he has a right to do or to abstain from doing-

- (a) obstructs or uses violence to or intimidates such debtor, or
- (b) Persistently follows such debtor from place to place or interferes with any property owned or used by him or deprives him of, or hinders him, in the use thereof, or
- (c) loiters or does any similar act at or near a house or other place where such debtor resides, or works, or carries on business or happens to be shall be deemed to molest such debtor:

Provided that a money-lender or his agent who attends at or near such house or place in order merely to obtain or communicate information or to make a demand for a loan due, shall not be deemed to molest the debtor.

(2) An offence under this section shall be cognisable and bailable.

**Exemption
from arrest.**

14. Notwithstanding anything contained in the Hyderabad Civil Procedure Code No. 3 of 1323 F, no labourer and no agriculturist who is a pattedar, shikmidar asami shikmi or occupant of land assessed at Rs. 50 or less, shall be arrested for detention in Civil Jail.

**Power to
make rules.**

15. (1) Government may make rules for carrying out the purposes of this Act.

(2) All rules framed under this Act shall come into force from their publication in the Jarida.

AJMER

[*In this State, The Bombay Money-lenders Act, 1946 is in force.*]

COORG MONEY-LENDERS ACT

Coorg Act No. I of 1939

(AS AMENDED BY ACT I OF 1946)

An Act to regulate the transactions of money-lending in the Province of Coorg

Preamble.

WHEREAS it is expedient to make better provision for the regulation and control of the transactions of money-lending ;

AND WHEREAS the previous sanction of the Governor-General has been obtained under section 97 of the Government of India Act, 1935, to the passing of this Act ;

It is hereby enacted as follows —

1. (1) This Act may be called the Coorg Money-lenders Act, 1939.

(2) It extends to the whole of the Province of Coorg.

Short title,
extent and
commence-
ment.

(3) It shall come into force on such date as the Chief Commissioner may, by notification, direct.

2. In this Act, unless there is anything repugnant in the subject or context, —

Definitions.

(i) “bank” means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament, or by Royal Charter or Letters Patent or by any Act of the Indian Legislature ; or registered or incorporated in any Indian State and notified by the Chief Commissioner in the *Coorg Gazette* for the purposes of this clause ;

(ii) “company” means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament, or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, VI of 1912 applies, and companies registered or incorporated in any Indian State and notified by the Chief Commissioner in the *Coorg Gazette* for the purposes of this clause ;

(iii) “co-operative society” means a society registered II of 1912. under the Co-operative Societies Act, 1912, or the Coorg Act Coorg Act II of 1936. Coorg-Co-operative Societies Act, 1936 ;

The Coorg Money-lenders, Act 1939

[COORG ACT I OF 1939]

- (iv) "court" includes a court acting in the exercise of insolvency jurisdiction
- (v) "money-lender" means a person who, in the regular course of money-lending business, either solely or in common with any other business, advances a loan as defined in this Act and shall include, subject to the provisions of section 3, the legal representatives and the successors in interest whether by inheritance, assignment or otherwise of the person who advanced the loan, provided that an employer or landowner who gives an advance in money or in kind to an agricultural labourer or tenant shall not be deemed to be a money-lender ;
- (vi) "interest" includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise ;
- (vii) "loan" means an advance whether of money or in kind at interest and shall include any transaction, which the court finds to be in substance a loan, but it shall not include —
 - (a) a deposit of money or other property in a Government post office bank or any other bank or with a co-operative society,
 - (b) a loan to or by or a deposit with any society or association registered under the Societies' Registration Act, 1860, or under any other enactment, XXI of
 - (c) a loan advanced by Government or by any local authority authorized by Government,
 - (d) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under the Companies Act, 1913 or any other auditor approved by the Chief Commissioner, VII of 1
 - (e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note, XXVI
 - (f) a transaction which is a charge created by the operation of law on, or is in substance a sale of, any immovable property ; 1881.
- (viii) "principal" means the amount actually lent to the debtor and shall not include capitalized interest ;
- (ix) "prescribed" means prescribed by rules made under this Act ;
- (x) "secured loan" means a loan for which the money-lender holds a mortgage, charge or lien on the property of the debtor or any part thereof as a security for that loan ;
- (xi) "unsecured loan" means any loan other than a secured loan.

The Coorg Money-lenders Act, 1939

[COORG ACT I OF 1939]

3. (1) Every money-lender shall—

aintenance
of accounts
by money-
lender and
supply of
statements
thereof to
debtors.

- (a) regularly maintain an account for each debtor separately of all transactions in respect of any loan advanced to that debtor ;
- (b) furnish such debtor every year with a legible statement of accounts signed by the money-lender or his agent of any balance or amount that may be outstanding against such debtor on such dates and in such areas as may be prescribed. Such statement of accounts shall include all transactions in respect of the loan entered into during the year to which the statement relates and shall be furnished, in Kannada and in such manner, in such form, containing such details and on such date as may be prescribed.

(2) The account required under clause (a) of sub-section (1) shall be so maintained that items due by way of interest shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The principal and interest shall be separately shown in the opening balance of each new annual account ;

Provided that —

- (i) if the loan has, since it was originally advanced, passed by inheritance or *bona fide* assignment to a widow or a minor, such widow or minor shall not be bound to maintain and furnish the account under sub-section (1) for a period of six months from the date of such passing ;
- (ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the account under sub-section (1) in the case of a loan wherein the title to recover is *sub-judice* between two or more persons claiming as money-lenders adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.

vidential
value of
copies of
accounts.

4. Copies of entries in the account required to be maintained under clause (a) of sub-section (1) of section 3, when certified in such manner as may be prescribed, shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

debtors not
bound to
admit
correctness
of accounts
if supplied,

5. A debtor to whom a statement of accounts has been furnished under clause (b) of sub-section (1) of section 3 shall not be bound to acknowledge or deny its correctness and his failure to protest shall not by itself be deemed to be an admission of the correctness of the account.

receipt of
payment
loan.

6. Every money-lender, who receives repayment from his debtor on account of any loan advanced to him, shall forthwith give a receipt therefor.

The Coorg Money-lenders Act, 1939

[COORG ACT I OF 1939]

Procedure
of a court
in suits
regarding
loans.

7. Notwithstanding anything contained in any other enactment for the time being in force, in any suit or proceeding relating to a loan—

- (a) the court shall, before deciding the claim on the merits, frame and decide the issue whether the money-lender has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3 ;
- (b) if the court finds that the provisions of clause (a) of sub-section (1) of section 3 or of section 6 have not been complied with by the money-lender it shall, if the plaintiff's claim is established in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs ; and
- (c) if the court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the money-lender, it shall, in computing the amount of interest due upon the loan, exclude every period for which the money-lender omitted duly to furnish the account as required by that clause :

Provided that if the money-lender has, after the time prescribed in that clause, furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omissions, include any such period or periods for the purpose of computing the interest.

Explanation.—A money-lender who has maintained his account and furnished his annual statements of accounts in the prescribed form and manner shall be held to have complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3 in spite of any errors and omissions, if the court finds that such errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of those clauses.

Presumption
in the case
of certain
loans

8. (1) If in any suit or proceeding relating to a loan, it is found that the interest charged exceeds, in the case of secured loan, seven and half per cent. per annum simple interest, and in the case of an unsecured loan, twelve per cent. per annum simple interest, the court shall, until the contrary is proved, presume for the purposes of sections 3 and 4 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was, as between the parties thereto, substantially unfair.

Explanation.—In the case of any loan so advanced by a person other than a money-lender if compound interest is charged and the amount claimed by the creditor by way of such interest until the date of the institution of the suit or proceeding for the recovery of the loan exceeds the amount of simple interest calculated at the rate of seven and half per cent. per annum or twelve per cent. per annum, as the case

The Coorg Moneylenders Act, 1939

[COORG ACT, 1 OF 1939]

may be, the court shall draw the presumption referred to in this sub-section until the contrary is proved.

(2) The provisions contained in sub-section (1) shall be without prejudice to the powers of the court under sections 3 and 4 of the Usurious Loans Act, 1918, in cases where the court has reason to believe that the interest charged, though not exceeding seven and half per cent per annum simple interest or twelve per cent per annum simple interest, as the case may be, is excessive and that the transaction was, as between the parties thereto, substantially unfair.

**Receipt for
arti
dged.** 9. (1) In case of pledged articles, the money-lender shall give the pledger a signed receipt for every pledged article with its general description, immediately after it is pledged, mentioning the amount for which it is pledged.

(2) Contravention of the provisions of sub-clause (1) shall be punishable with fine not exceeding fifty rupees.

10. The provisions of sections 3, 4, 5, 6, 7, 8 and 9 shall not apply to any loan advanced before this Act comes into force :

Provided that, if any fresh transaction in respect of a loan made before this Act comes into force is made after this Act comes into force, such transaction shall be subject to the provisions of those sections.

**Prohibition
of compound
interest and
provision as
to defaulting** 11. Any agreement made after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest :

Provided that provision may be made in any such agreement that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of principal or interest or both, the money-lender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

**Prohibition
of charges or
expenses on
loans by
money-lend-
ers.** 12. Any agreement between a money-lender and a debtor or intending debtor for the payment by the debtor or intending debtor to the money-lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal and if any sum is paid to a money-lender by the debtor or intending debtor as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the debtor or intending debtor, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and the amount shall be deemed to be reduced accordingly.

Exception.—Nothing in this section shall debar a money-lender from recovering costs of investigating title to the property, costs of stamp, registration of documents and other

The Coorg Moneylenders Act, 1939

[COORG ACT, I OF 1939]

IV of 1882 usual out of pocket expenses in cases where the contract includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof ; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

Maximum
amount of
interest
which may
be decreed.

¹ [“12A. (1) Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit in respect of a loan advanced before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realised as interest through Court or otherwise is greater than the amount of the loan advanced, or if the loan is based on a document, the amount of loan mentioned in the document on which the suit is based.]

(2) If a decree has already been passed on the basis of a debt and remains unsatisfied in whole or in part, the Court which passed the decree or any other competent Court shall, on the application of the judgment-debtor, amend it by reducing, in accordance with the provisions of sub-section (1), the amount decreed on account of interest.

(3) A decree amended in accordance with the provisions of sub-section (2) shall be deemed to bear the date of the original decree, and, notwithstanding any provision in any law to the contrary, no appeal shall lie from any order amending a decree under the above sub-section (2).

(4) Any amount already received by the creditor on account of interest in excess of that due under this section shall be credited towards the principal, but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him”.

Powers to
make rules

13. (1) All rules for which provision is made in this Act shall be made by the Chief Commissioner and shall be consistent with this Act.

(2) All rules shall be subject to the condition of previous publication.

(3) In particular and without prejudice to the generality of the foregoing power, the Chief Commissioner may make rules prescribing—

(a) the manner and form with numerals in which statements of accounts shall be furnished and the details to be given in such statement under clause (b) of sub-section (1) of section 3 ; and

(b) the manner in which copies of entries in the account shall be certified under section 4.

¹ Ins by the Coorg Act, I of 1946.

DELHI.

[In this State the following Acts are in force:—

1. Punjab Regulation of Accounts Act, 1930.
2. Punjab Debtors' Protection Act, 1936.
3. Punjab Registration of Money-Lenders Act, 1938.
4. Interest Act, 1918.
5. Usurious Loans Act, 1918.
6. Usuary Loans Repeal Act, 1855.]

KUTCH

[In this State the Bombay Money-lenders Act 1946 is in force.]

HIMACHAL PRADESH

[In this State the Usurious Loans Act 1918 is in force in the States of B'agat, Baghal, Kunihar Mangal, Kutchar, Mahlog. Also Interest Act 1939 is in force in Kuthar and Mahlog.]

BILASPUR

***[In this State the Punjab Regulation of Accounts Act 1930
is in force.]***

THE JAMMU AND KASHMIR REGULATION OF ACCOUNTS ACT, 2001.

Act No. XIV of 2001

An Act to regulate the keeping of Accounts of certain transactions

WHEREAS it is expedient to make provision for regulating the keeping of accounts relating to certain transactions in the Jammu and Kashmir State; it is hereby enacted as follows :—

Short title,
extent and
commence-
ment.

1. (a) This Act may be called the Jammu and Kashmir Regulation of Accounts Act, 2001.

(b) It shall extend to the Jammu and Kashmir State.

(c) It shall come into force on such day as the Government may, by notification in the Government Gazette, appoint in this behalf :

Provided that this day shall not be earlier than six months or later than one year after the date of final publication of the rules made under section 6.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context :—

(a) “ bank ” means a company carrying on the business of banking ;

(b) “ Company ” means a company as defined in the Jammu and Kashmir Companies Act of 1977 ;

(c) “ co-operative society ” means a society registered or deemed to be registered under the provisions of the Jammu and Kashmir Co-operative Societies Act, 1993 ;

(d) “ creditor ” means a person who in the regular course of business advances a loan as defined in this Act and shall include, subject to the provisions of section 3 the legal representative and the successor-in-interest whether by inheritance, assignment, or otherwise of the person who advanced the loan ;

(e) “ interest ” includes the return to be made over and above what was lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise ;

(f) “ loan ” means an advance whether of money or in kind at interest and shall include any transaction which the Court finds to be in substance a loan, but it shall not include—

(i) a deposit of money or other property in a Government Post Office Bank or any other bank or in a company or with a co-operative society ;

The J. & K. Regulation of Accounts Act, 1944

[J. & K. Act XIV of 2001]

- (ii) a loan advanced by Government or by any local body authorised by Government ;
- (iii) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under any law for the time being in force in the State ;
- (iv) a loan advanced to a trader ;
- (v) an advance made on the basis of a mortgage deed.
- (g) "prescribed" means prescribed by rules made under this Act.

Duty of
creditor to
maintain
and furnish
accounts.

3. (1) A creditor shall in order to comply with the provisions of this Act :—

- (a) regularly record and maintain an account for each debtor separately of all transactions relating to any loan advanced to that debtor, in such manner as the Government may prescribe ;
- (b) furnish each debtor every six months with a legible statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on the last date of Assuj, or on the last date of the month of Chet in every year. This statement of account shall include all transactions relating to the loan entered into during the six months to which the statement relates, and shall be sent, in such manner and in such form and containing such details as the Government may prescribe, within one month after the last date of the said six months.

Explanation.—(i) The Government shall prescribe the forms and numerals in which the accounts required by this provision of this sub-section are to be maintained and furnished.

(ii) The prescribed accounts shall be so kept that items due by way of interest shall be shown as separate and distinct from the principal sum, and separate totals of principal and interest shall be maintained. The creditor shall not include the interest or any portion of it in the principal sum, and the principal and interest shall be separately shown in the opening balance of each new six monthly account :

Provided that—

- (a) if the loan has, since it was originally advanced, passed by inheritance or assignment to widow or minor, such widow or minor shall not be bound to maintain and furnish the account prescribed by this section for a period of six months from the date of such passing ;

The J. & K. Regulation of Accounts Act 1944

[J. & K. Act, XIV of 2001]

- (b) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the prescribed account in the case of a loan wherein the title to recover is *subjudice* between two or more persons claiming as creditors adversely to each other unless and until the title has been finally decided by a Court of competent jurisdiction.

(2) Entries in the account prescribed under clause (a) of sub-section (1) shall be deemed to be regularly kept in the course of business for the purposes of section 34. Evidence Act, 1977 and copies of such entries certified in such manner as may be prescribed shall be admissible in evidence for any purposes in the same manner and to the same extent as the original entries.

Explanation.—A person to whom a statement of account has been sent under clause (b) of sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall not be deemed to be an admission of the correctness of the account.

Penalty for
non-compliance with
the provision
of section 3

4. Notwithstanding anything contained in any other enactment in force for the time being —

- (a) in any suit or proceeding relating to a loan, the Court shall, before deciding the claim on the merits, frame and decide the issue, whether the creditor has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3 ;
- (b) if the Court finds that the provisions of clause (a) of sub-section (1) of section 3 have not been complied with by the creditor, the Court shall if his claim is established in whole or in part, disallow the whole or a portion of the interest found due, as may seem reasonable to the Court in the circumstances of the case and shall disallow costs ;
- (c) if the Court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the creditor, the Court shall, in computing the amount of interest due upon the loan, exclude every period for which the creditor omitted duly to furnish the account as required by clause (b) of sub-section (1) of section 3: provided that if the creditor has, after the time prescribed in that clause, furnished the account and he satisfied the Court that he had sufficient cause for not furnishing earlier, the Court may, notwithstanding such omission, include any such period or periods for the purposes of computing the interest.

The J. & K. Regulation of Accounts Act, 1944

[J. & K. ACT XI V OF 2001]

Explanation.—A person who has kept his account and sent his six monthly statements in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 3, shall be held to have complied with the provisions of these clauses in spite of errors and omissions, if the Court finds that the errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

Saving

5. The provisions of this Act shall not apply to any loan advanced before commencement of this Act.

Power of
Government
to make
rules

6. (1) The Government may make rules, not inconsistent with the Act, for the purposes of carrying out all or any of the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Government may make rules :—

- (i) prescribing the forms and numerals to be used in the accounts required by sub-section (1) of section 3 ;
 - (ii) prescribing the manner in which the accounts required by clause (b) of sub-section (1) of section 3 shall be furnished by the creditor to the debtor, the forms to be used, and the details to be incorporated therein.
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